

1926.

## NEW ZEALAND.

## NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1924.

REPORT AND RECOMMENDATION ON PETITION No. 63 OF 1924, OF TAMAHO MAIKA AND OTHERS,  
RELATIVE TO THE PRICE PAID BY THE CROWN IN 1875 FOR TE KAUAEO-RURU-WAHINE  
BLOCK.

*Presented to Parliament in pursuance of the provisions of Section 45 of the Native Land Amendment  
and Native Land Claims Adjustment Act, 1924.*

*Petition No. 63 of 1924.—Kauae-o-Ruru-Wahine 1, 2, 3.*

Native Department, Wellington, 28th May, 1925.

PURSUANT to section 45 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, I enclose the report of the Native Land Court herein. In view of that report I recommend that no further action be taken with regard to the matter complained of by the petitioners.

The Hon. the Native Minister.

R. N. JONES, Chief Judge.

Opononi, 1st May, 1925.

*Decision of Court: Te Kauae-o-Ruru-Wahine Block.*

APPLICATION 79.—Application by the Chief Judge under section 45 of the Native Land Amendment and Native Land Claims Adjustment Act, 1924, for inquiry and report upon the claims in Petition No. 63 of 1924, of Tamaho Maika and others, as to the price paid by the Crown in 1875 for Te Kauae-o-Ruru-Wahine Nos. 1, 2, and 3, and as to compensation.

Mr. J. J. Sullivan, solicitor, Auckland, for the petitioners; Mr. R. J. Knight, Lands Office, Auckland, for the Crown.

The inquiry opened at Opononi on Thursday, 30th April, 1925, before a particularly large and representative gathering of Natives interested. The hearing was concluded on Friday, 1st May, 1925, and the Court decided that it was quite impossible to report favourably upon the claims of the Natives in this case.

Counsel for petitioners claimed—

- (1.) That the sale to the Crown was negotiated between the Natives and a Mr. Charles Nelson at a meeting in 1873, as a result of which the title was investigated, partition orders made, and deeds of sale to the Crown signed in 1875:
- (2.) That at such meeting in 1873 Mr. Charles Nelson acted as the agent of the Crown and was understood by the Natives to be acting as agent for the Crown, and that he agreed with the Natives that the land only should be sold to the Crown, and that the timber on the land should be reserved from the sale and remain vested in the Natives:
- (3.) That the Natives, when signing the deeds of sale on the 12th June, 1875, still understood that the land only was being sold, and not the timber, and that they relied on the 1873 agreement with Mr. Nelson for the reservation of the timber:
- (4.) That such reservation of the timber, though not expressed in writing as required by the Statute of Frauds, was a collateral agreement capable of adding to the effect of the deeds of sale though not of varying the terms of the deeds of sale:
- (5.) That the omission of Mr. Nelson to notify the Crown or his superior officers in 1875 of the 1873 agreement to exclude the timber from the sale constituted an act of fraud on the part of Mr. Nelson, and that it would be contrary to equity and good conscience for the Crown to take advantage of this act of fraud of its agent:
- (6.) That the Natives had sufficient cause for regarding Mr. Nelson as the agent of the Crown authorized to agree to the reservation of the timber from the sale, because he negotiated the purchase for the Crown and also paid over some deposits to the Natives.

It was admitted by counsel for petitioners that there was no question of fraud on the part of any one else apart from Mr. Nelson, and it was admitted that the deeds of sale were perfectly valid and were properly executed and witnessed, and that the purchase-money had actually been paid to the Natives shown in the title.

In the petition itself (No. 63 of 1924) there is no mention made of any alleged reservation of the timber, nor of any act of fraud on the part of Mr. Nelson, nor of any claim that Mr. Nelson was the agent of the Crown. It was contended by counsel for the petitioners, however, that the petition itself had been "swallowed up" in the legislation of 1924 authorizing the present inquiry, and that it was open to the Court to inquire into the allegations of fraud and of a reservation of the timber, so as to do substantial justice in the case.

Beyond calling very brief and insufficient evidence as to the quantity and value of the timber on the block at present, counsel for petitioners produced no evidence whatever in support of the claim in the petition that the price paid in 1875 was so inadequate as to give the Natives a right to compensation.

Evidence was, however, brought in support of the claim that the Natives in 1873 agreed to sell the land only and not the timber to the Crown, but the witnesses admitted that in 1875 the Natives, when signing the deeds in the presence of the Native Land Court Judge, did not tell the Judge anything at all about this reservation of the timber, nor did they tell any Purchase Officer, or other senior Crown officer dealing with land, about this reservation.

Evidence was also brought by counsel for petitioners to show that the Natives had from time to time exercised rights over the timber since 1875 by taking timber for the erection of two churches, some whares and fences, and for the building of canoes, and that the Natives had dug gum on this land.

Evidence was also brought to show that the Natives presented a petition to Parliament about the year 1890, through their then member, Mr. Mutu Kapa, but it was admitted that nothing further was done until 1921, when the present petition was put under way.

Only three witnesses were called in support of the claims of petitioners, and the evidence of two of them was of practically no value to the petitioners. The third witness was the Hon. Mr. Wiremu Rikihana, M.L.C., whose evidence will be referred to later.

For the Crown it was contended—

- (1.) That Mr. Charles Nelson was not the agent of the Crown; that he was only the Interpreter attached to the Purchase Department; and that, in any case, no evidence whatever of fraud on his part had been given for petitioners in this case:
- (2.) That neither Mr. Nelson nor even any Purchase Officer could possibly have had authority from the Crown to negotiate a purchase of the land without the timber:
- (3.) That no mention of the alleged reservation of the timber was made by the Natives to the Native Land Court Judge who witnessed the signing of the deeds of sale, nor was any mention of such reservation ever made to any representative of the Crown from the year 1875 till the date of the present petition, and that the Natives themselves have never at any time gone upon the land in question and asserted any right to the timber:
- (4.) That this particular purchase was only one of a large number of purchases of timber areas in the same district, all effected about the same time, 1875 to 1877, and at about the same price, and that no allegations of fraud or reservation of timber had ever been made in respect of these other purchases.
- (5.) That the timber on Te Kauae-o-Ruru-Wahine at the time of the sale (1875) was of practically no milling-value on account of its inaccessibility, and that the royalty value of easily accessible kauri timber in 1875 was very low indeed—consequently, that the price paid in 1875 was an adequate one according to then known values.

The Court, after hearing both sides and the addresses on behalf of the petitioners and the Crown, found it to be conclusively proved—

- (1.) That there was no evidence of fraud on the part of Mr. Charles Nelson in 1873 or 1875 in respect of this purchase:
- (2.) That Mr. Charles Nelson was not the authorized agent of the Crown to effect this purchase—the regular Purchase Officers being in the district at the time arranging the purchase of this block and of large areas in the same locality:
- (3.) That no officer of the Crown was authorized to buy the land only, apart from the timber:
- (4.) That both the timber and the land were bought by the Crown when it effected this purchase, and that there was no reservation of the timber from the sale by the Natives:
- (5.) That the price paid by the Crown in 1875, about 1s. 3d. an acre, was only slightly lower than the average price (about 1s. 5d. per acre) paid by the Crown for areas in the same district, totalling about 140,000 acres, purchased during the years 1875 to 1877, many of which areas contained large forests of kauri and other timber:
- (6.) That the Kauae-o-Ruru-Wahine Block is a very inaccessible block, with the kauri timber distributed over a plateau about 1,200 ft. above sea-level, and that at the time of the purchase in 1875 the kauri timber had practically no milling-value on account of low prices and the probable cost of working this particular block:
- (7.) That the price for kauri timber easily workable was very low in 1875 in the Hokianga district—about 2d. to 4d. per 100 ft.
- (8.) That the Natives interested have no valid claim for compensation either in respect of any alleged fraud or in respect of any substantial inadequacy of the consideration paid by the Crown in 1875.

The Court remarks that it finds it quite impossible to believe that any body of Natives could know about a reservation of timber made in 1875 and yet stand tamely by and make no claim until the actual Court hearing at Opononi on the 30th April, 1925. If any such reservation had been made, the Court is certain that the Natives would have agitated and kept on agitating until they secured redress. It is significant that the petition of 1924 itself does not say a word about any reservation of the timber from the sale or about any alleged fraud on the part of Mr. Nelson. The Court asked petitioners what the Crown bought the land for at all if it did not buy the timber, as the Crown could not use the land with the timber on it. What benefit could the Crown get from the purchase if the timber were to remain vested in the Natives? Petitioners could give no answer.

There remains only the evidence of the Hon. Mr. Wiremu Rikihana. The Court is satisfied that he would not mislead the Court. He gave evidence as to events, however, that happened fifty years ago, when he was a young man, when his father, the leader of his people, was still alive. It was his father who took part in the negotiations. The young son would not be likely to take part. The probability is that there was an understanding that, if the purchase went through, the Crown would not debar the Natives from taking a bit of timber off the block for the erection of a church or some whares or fences, or for the making of some canoes. Such an understanding is fairly common in Crown purchase of timber areas even to this day. It is probable that the recollection of some such understanding has led the Natives to believe now that the timber was actually reserved from the sale. It was a forlorn hope, and they would have been well advised to have held to their original claim that the price paid by the Crown was inadequate.

It is just possible, of course, that the Hokianga Natives might have used this as a test case to see if it were possible to reopen the purchases of all Crown areas in the Hokianga district upon which valuable quantities of kauri timber still exist.

Although the Court is unable to report favourably upon the case as presented by the petitioners, it begs to draw attention to the ruling motive lying behind the efforts of the petitioners. They see in the Hokianga district very large areas of most valuable kauri forest which their elders sold to the Crown in 1875 to 1877 for what was then a fair price, but what now represents only a small part of the present value. For instance, the Crown witnesses estimate the quantity of kauri timber at present on the Te Kauae-o-Ruru-Wahine Block at about 17,000,000 ft., valued at 5s. to 6s. a 100 ft. Thus its present value for kauri timber alone is about £50,000, and there are other timbers as well. The whole block, timber and land, was bought by the Crown in 1875 for £578 15s., plus expenses, survey, &c., £279 5s., or a total of £858. It is natural for the Natives to feel a little sore over the bargain made by their elders in 1875. The Waipoua State Forest is in the same position, only infinitely more valuable, and the price paid for it in 1877 was £2,200 for 35,300 acres.

The Court has no recommendation to make in respect of the petition referred to the Court for inquiry and report, but it will seek an opportunity later on of bringing before the Hon. the Native Minister, and the Under-Secretary, the general position in which the Hokianga Natives now find themselves as the result of the huge sales made by their elders to the Crown some fifty years ago.

F. W. ACHESON, Judge.

*Approximate Cost of Paper.*—Preparation, not given; printing (525 copies), £3 17s. 6d.

By Authority: W. A. G. SKINNER, Government Printer, Wellington.—1926.

Price 3d.]

