1926.

NEW ZEALAND

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1925.

REPORT AND RECOMMENDATION ON PETITION No. 377 OF 1924, OF WHAREHUIA HETA AND THIRTY-EIGHT OTHERS, RELATIVE TO KAINGAROA No. 1 BLOCK.

Presented to Parliament in pursuance of Section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925.

Petition No. 377 of 1924.—Kaingaroa No. 1 Block.

Native Department, Wellington, 22nd July, 1926.

PURSUANT to section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925, I herewith submit the report of the Native Land Court herein.

The report is rather lengthy, but, briefly put, it finds that a title was issued in 1880 to thirty-one persons; that as many more were entitled (these were probably chosen as representatives for the purpose of disposing of the land to the Crown); that the Crown bought from these thirty-one persons, paying what was then considered a fair price; and that the deed of sale was certified by a Trust Commissioner part of whose business was to inquire into the merits of the transaction. On the main points the report is adverse to the petitioners, but it thinks probably the Ngatimanawa is entitled to a reserve of 500 acres called Motumako because it was mentioned in an inchoate lease. The conveyance by the owners found by the Court would, of course, supersede this old lease as far as any legal claim is concerned.

In view of the report of the Court, and that the sale to the Crown has stood for forty-six years, I recommend that no legislative action be taken.

R. N. JONES, Chief Judge.

The Right Hon. the Native Minister, Wellington.

Office of the Waiariki District Native Land Court,
Rotorua, 13th May, 1926.

Memorandum for the Chief Judge, Native Land Court, Wellington.

Kaingaroa No. 1, and Petition No. 377 of 1924, by Wharehuia Heta.

SIR,—

Upon your reference under section 34 of the Native Land Amendment and Native Land Claims Adjustment Act, 1925, I have to report as follows:—

The reference was advertised for Rotorua on the 8th March last, but, at the request of certain of the petitioners, was adjourned to be dealt with at Murupara. Inquiry opened at Murupara on Wednesday, the 28th April. Mr. W. Bird represented a majority of the petitioners, while Wharehuia Heta, one of the petitioners, appeared for himself. Mr. O. A. Darby represented the Crown.

Before proceeding to deal with the result of the inquiry I propose to detail the ascertainment of the title to the block—Kaingaroa No. 1.

The first mention of Kaingaroa No. 1 Block is to be found in Taupo Minute-book No. 1, page 14, when, upon the application of Topi te Kahuwhero, the claim—apparently for investigation—was dismissed, as "there was no likelihood of the land being surveyed at present." The investigation of the block took place at Opotiki before Judge Halse (Opotiki Minute-book 1/116). The hearing extended over a period from the 31st July till the 12th September, 1878. Judgment was delivered on the 17th September, 1878, and was in favour of the Ngatimanawa tribe or hapu.

On the 20th September, 1878, as the parties could not agree on the names to be inserted in the memorial of ownership, the case was adjourned till the next sitting of the Court.

On the 23rd September, 1879, the case came before Judge Symonds at Matata, and the following minute appears in Opotiki Minute-book No. 1, page 249: "Kaingaroa No. 1.—List of names handed in acceeded to by Ngatimanawa and accepted by the Court. List of names read out, as well as the list of names leased by the Government. A memorial of ownership was ordered by the Court."

An order for memorial of ownership in favour of Rawiri Parakiri and thirty others, bearing date the 23rd September, 1879, was drawn up and signed by Judge Symonds. The area shown in this order is 114,517 acres. By Order in Council dated 19th December, 1878, a rehearing was ordered by His Excellency the Governor, such rehearing to take place within one year from the 27th September, 1878. A later Order in Council, dated 4th February, 1880, ordered a rehearing to take place within one year from 27th October, 1879.

Rehearing commenced before Judge Symonds at Whakatane on the 27th October, 1880 (Whakatane Minute-book 1/1). Decision on rehearing was delivered on the 4th November, 1880, and order for memorial of ownership of Rawiri Parakiri and twenty-seven others made.

The rehearing Court did not deal with the whole of the land covered by the order of the 27th September, 1879. A memorial of ownership to Rawiri Parakiri and twenty-seven others, bearing date the 4th November, 1880, was signed by Judge Symonds and recorded in the Native Land Court Office. The memorial of ownership covered an area of 104,327 acres. This memorial of ownership has been accepted as the title until the present petition, which contends that this order on rehearing was not a final one, and not made in accordance with the provisions of the then existing Acts.

I propose to deal with the grounds of petition in sequence.

Clause 1 is merely a statement of fact, and is correct, with the exception that names in the memorial of ownership numbered twenty-eight and not twenty-nine.

Clause 2 is a statement of fact. The deed of sale is dated the 8th December, 1880. Twenty-seven of the persons in the memorial of ownership signed on the 4th December, 1880, and one on the 8th December, 1880. The whole of the persons named in the memorial of ownership have signed the deed. The consideration set out in the deed is £7,754 9s. 7d. The attesting witnesses are three in number—John M. Hall, Clerk, Resident Magistrate's Court, Ohinemutu; Herbert T. Way, J.P.; and William Arthur Thom, Licensed Interpreter. The deed bears the following certificate: "I, Theodore Minet Haultain, the Trust Commissioner under the Native Land Frauds Prevention Act, 1870, for the District of Auckland, do hereby certify that I have with respect to the within-written instrument and the alienation thereby witnessed made the inquiries directed by the said Act, and do certify that I am satisfied with the result of such inquiries.—T. H. HAULTAIN, Trust Commissioner. Dated at Auckland, this 26th day of April, 1881."

Clause 3 is also a statement of fact. Petitioners sought to show that the Crown bought before the order had matured, but obviously this fact could not invalidate the sale. Again the order was one on rehearing, and therefore final.

Clause 4: There can be no question that there must have been many other members of Ngatimanawa entitled to share in this block. On the Native Land Court files appear lists of many persons of Ngatimanawa. These lists, which are unfortunately not noted, were apparently handed into Court at the hearing before Judge Symonds on the 23rd September, 1879. The only list which is noted as "Accepted by the Court" is the list of thirty-one persons in whose favour the order for memorial of ownership was made. It is admitted that all the persons in this accepted list are Ngatimanawa, but it is stated they did not comprise all the *kaumatua* of Ngatimanawa. It is further stated that the list was in the handwriting of Captain Mair; but this is not so. There is no direct evidence to show how it was that these thirty-one persons were selected to go into the title, but, as I have stated, the only list noted by the Court is that for such persons. The evidence given by two witnesses called on behalf of petitioners relative to what took place at hearing and rehearing is contradictory, but both agree that land was awarded to the persons—some three hundred odd—in the lists handed into Court. The contention of the petitioners is that the lists of both the thirty-one persons in the original order and the twenty-eight persons in the rehearing order were selected by Captain Mair to go into such order. This contention is not proved. Wharehuia Heta says Parakiri, Harehare, Rawiri, and others selected the names to go into the title, while Harehare Aterea says no committee was set up. It is to be noted that the manuscript list of the twenty-eight persons in the rehearing order is in Captain Mair's handwriting with the exception of one name. This list is, however, signed by one of the leading Ngatimanawa—Peraniko te Hura; and Harehare Aterea under cross-examination admitted that it comprised the elders of Ngatimanawa. Failing satisfactory evidence to the contrary, the only inference to be drawn is that, as the Crown was purchasing the block, a limited number of representatives of the Natives entitled to share in the land were selected to go into the order to facilitate such purchase. (See Captain Mair's book, page 67). It is to be noted that even on rehearing the number of Natives in the order remained about the same—*i.e.*, twenty-eight in all. The latter part of clause 4 has no merit, as application for rehearing was lodged within the time prescribed by the then existing law.

Clause 5: The order of the Native Land Court made on the 4th November, 1880, *was undoubtedly a final one*, being made on rehearing.

Clause 6: This clause was not stressed. The deed of sale is all in order. Signatures are properly attested, and deed itself bears the certificate of the Trust Commissioner.

Clause 7: The member of Ngatimanawa here alluded to was Harehare Aterea—one of the witnesses called in the present proceedings. When the deed of sale was produced for his inspection he admitted that the signature "Harehare" thereon looked like his own. He also admitted that he received £2,000 of the purchase-money. If the price of £7,515 12s. 3d. (*sic*) was disputed it is incredible that each and every one of the twenty-eight owners in the memorial of ownership should have signed the deed of sale in which the price £7,754 9s. 7d. is clearly set out.

The petitioners stress the fact that in Captain Mair's book (page 64) appears the statement that the Kaingaroa Block, estimated to contain 120,000 acres, was dealt with by the Native Land Court

and awarded to Ngatimanawa, and, further, that he took to Galatea "the purchase-money for Kaingaroa, about £15,000." It is contended by the Crown that the £15,000 represented the purchase-money for both Kaingaroa Nos. 1 and 2, and not for Kaingaroa No. 1 alone. This latter contention is quite a legitimate one, seeing that the sale of Kaingaroa No. 2 took place on the 18th January, 1881, or some five or six weeks later than that of Kaingaroa No. 1.

One other support for the Crown's contention is that the price paid for Kaingaroa No. 1 was £7,754 9s. 7d., and for Kaingaroa No. 2 £6,659 2s. 2d., making a total of £14,413 11s. 9d.; incidental expenses came to £618 18s. 11d., which added to above amount makes a grand total of £15,022 10s. 8d., a sum practically equal to the amount stated by Captain Mair to have been taken by him to Galatea for the purchase of Kaingaroa.

Notwithstanding this question as to the amount of purchase-money, the fact that the deed signed by all the persons in the memorial of ownership provides for a consideration of £7,754 9s. 7d. still remains, and there is really no substantial evidence to support the contention that the purchase price was to be £15,000 for Kaingaroa No. 1 alone. I suggest that departmental files or vouchers can furnish better evidence than any now obtainable.

I would again draw attention to that paragraph on page 67 of Captain Mair's book which deals with the distribution of the purchase-money: clearly we could have no stronger evidence that the twenty-eight persons were representatives or trustees, and that they recognized their position as such by arranging a distribution of the purchase-money amongst Ngatimanawa.

Clause 8: For me to express an opinion upon the allegation contained in this clause is very difficult. Up till a few years ago pumice land, which forms the greater part of this block, was looked upon as being quite valueless. Recent years have, however, proved it to be of some value for afforestation and other purposes.

The question to be answered is, Was the price paid by the Crown for the land as it stood in 1880 a fair one? It is asserted by petitioners that ten years after the purchase the Government placed a value of 5s. per acre on Block 58, which formed part of this land; that Rangipo (a reserve out of the Kaingaroa No. 1, and situated along the banks of the Rangitaiki) sold in 1890 (ten years later) at 3s. per acre; that in 1907 Government valued Matahina C, the block adjoining this land, at 3s. per acre; that part of Kaingaroa No. 1A sold in 1885 for 3s. per acre, and that recently the Government purchased similar land at £1 10s. per acre. These assertions, which were not supported by documentary or oral evidence, were not disputed by the Crown. Mr. Darby stated that the price paid for this land works out at approximately 1s. 6d. per acre. He contends that Rangipo was the most fertile part of this block; yet ten years after the sale of this block Rangipo only realized 3s. per acre. He also emphasizes the fact that twenty-seven years after the sale of this block Matahina C, the adjoining block, was also valued at 3s. per acre only. He submits that the Government valuation of Kaingaroa No. 1A North, made as late as the 31st March, 1914, was only 3s. per acre, and for Kaingaroa No. 1A South only 2s. 6d. per acre. He further submits that the value placed on Block or Run 58 included loading for survey and other overhead expenses, and that the recent purchase of part of Kaingaroa for £1 10s. per acre was no criterion of value, as it formed part of Reporoa Estate, for which a lump sum was paid. Harehare Aterea says they asked Captain Mair to pay them 5s. per acre for the block, but Captain Mair said he would not pay that for pumice land.

Clearly, on the petitioners' statement as to values of surrounding blocks, it is quite impossible for me to say that 1s. 6d. per acre paid for Kaingaroa No. 1 was too little; on the contrary, it would appear from the values quoted that the price paid by the Government was quite as much as the land was *then* worth. I would draw attention to the fact that the price paid for Kaingaroa No. 2 was the same as for Kaingaroa No. 1, yet no question of adequacy of consideration for No. 2 has been raised.

Petitioners state that it was intended that two further reserves—viz., Kiorenui and Motumako—were to be returned to them or to be excluded from the sale of the block to the Crown. Except in the evidence of the two witnesses called before me we have no record of the two reserves claimed. Neither of these two reserves is shown on the plan No. 4184, which was the plan used upon the investigation. This plan, however, shows the following three reserves: Oruatewehi, Rangipo, and Karatia.

The petitioners asserted before me that Kiorenui Reserve, an area of 6,138 acres, was promised by the Government, and also that such reserve was surveyed in 1879. Both these assertions they have failed to prove. It is certainly true that a *sketch* of a piece of land called Kiorenui was made in 1879, when two other reserves, Oruatewehi and Rangipo, were surveyed. I consider that the discovery of this sketch was the reason why the Natives now lay claim to this alleged reserve. As I have stated, there is no documentary evidence dealing with this alleged reserve produced. The contention of the Crown is that this sketch of Kiorenui was intended to refer to the Karatia Reserve, which reserve was excepted from both investigation and sale of block. This is borne out by the fact that on the county litho the Karatia Reserve, which contains 1,600 acres or 1,700 acres, is in error called Kiorenui, and is given an area of 6,138 acres.

Beyond the sketch already alluded to there is nothing to show that such a piece or reserve existed. This sketch was made before the investigation of the block which excluded the three reserves, Oruatewehi, Karatia, and Rangipo. Yet on such investigation there is absolutely nothing to indicate that Kiorenui was to be deemed a reserve and excluded from such investigation. The total area of the three reserves in this block is 2,735 acres, while Captain Mair says in his book (page 67) that he urged the Ngatimanawa to make adequate reserves, and 1,700 acres and three small totara bushes were cut out. It is idle to imagine that if it was actually intended to make a reserve of Kiorenui the area of 6,138 acres is too large an area to be forgotten or overlooked.

The claim that Motumako was to be another reserve is also urged by petitioners. Again no reference can be found that deals with the setting-aside of this piece as a reserve. It is included in the land investigated and sold. The position of this alleged reserve is somewhat different from that of Kiorenui. There is apparently an actual survey which comprises 200 and 300 acres and adjoins

Oruatewehi Reserve. The petitioners claim that these areas comprised two bushes which were to be set aside from the sale. Although there is no documentary evidence to support this, I am inclined to think that the two areas comprised two of the bushes alluded to by Captain Mair (page 67). A significant fact is that the two areas are surveyed, and are shown on the county litho, although no actual plan of them is forthcoming.

In concluding this report there are one or two features to which I would draw your attention.

I have placed very little reliance, if any, upon the very circumstantial statement made by William C. Savage, one of the witnesses called by petitioners. His evidence was in part flatly contradicted by Harehare Aterea, another witness for petitioners. At the conclusion of Savage's evidence I discovered that at the time of the purchase by the Crown he was only a lad of thirteen years of age—this upon his own admission.

Again, after a lapse of forty-six years it is impossible for witnesses to retain a clear impression of what actually took place at both the investigation and the sale of the block. It appears that before his death Captain Mair sent a document regarding the purchase of Kaingaroa No. 1 to the elders of Ngatimanawa for them to sign. The actual contents of this document I am unable to discover. The Ngatimanawa refused to sign, and Captain Mair then wrote them a somewhat insulting letter. This, one of the witnesses stated, was the reason for the petition. It would appear that by the death of Captain Mair an important witness for the Crown was removed, and that had he been alive it is possible the present petition would never have been presented.

Another point raised by petitioners, but not mentioned in the petition, is that they have not received the full rent under lease to the Crown (see deed No. 478, of 28th January, 1875: Turton's Deeds, Vol. 1, p. 673). Upon this point I am unable to comment, but departmental records will show if rental was paid from date of lease to date of purchase.

To briefly summarize my report, the petitioners have failed to satisfy me on all points excepting the reserve called Motumako (500 acres), which I consider was intended to be set aside for the Ngatimanawa hapu or tribe.

Enclosed herewith is a copy of the minutes taken at the inquiry, and departmental file N. 1925/311.

Yours faithfully,
A. G. HOLLAND, Judge.

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