

1886.
NEW ZEALAND.

REMOVAL OF RESTRICTIONS ON SALE OF NATIVE LANDS

(REPORT BY MR. COMMISSIONER BARTON ON).

Laid on the Table by the Hon. Mr. Ballance, with the Leave of the House.

G. E. BARTON, Esq., to the Hon. the NATIVE MINISTER.

GENERAL REPORT.

In accordance with the desire expressed by the Hon. the Native Minister, at Tauranga on the 26th April, 1886, that, for the information of Parliament, I should report to him generally on the work done by the Commission to date, I have the honour to state as follows:—

1. On the 30th November, 1885, His Excellency the Governor issued his Commission, setting forth that restrictions had been placed on the alienation of certain lands belonging to aboriginal natives, which restrictions could only be removed by His Excellency the Governor; that certain Europeans, having entered into negotiations for the purchase or lease from Natives of blocks of land held under such restrictions, had applied for the consent of the Governor to the alienation of such lands; that it was desirable that such consent should only be given after due and formal inquiry; and that His Excellency appointed me as Commissioner “to inquire into all applications for the removal of restrictions referred to me by the Hon. the Native Minister or by his direction.”

2. I was specially directed by the Commission “to ascertain whether the persons to whom the lands were proposed to be alienated had acted with good faith in their negotiations with the Natives, and were paying sufficient prices,” and to report in writing upon all such applications referred to me.

3. Shortly after the issue of the Commission, applications for the removal of restrictions upon eighty-three blocks of land were referred to me by the Hon. the Native Minister. These blocks were situated in the following districts: Wellington, Wairarapa, Napier, Gisborne, Opotiki, Whakatane, Matata, Tauranga, Rotorua, Taupo, Waikato, Te Aroha, Thames District, Coromandel, Auckland, Kaipara, Hokianga, Bay of Islands, Mangonui, Whangarei, Taranaki (Waitara), Palmerston District, Invercargill (Southland).

4. The month of December, including the holidays, was consumed in the necessary preparations for the work of the Commission—that is, in collecting information respecting these eighty-three blocks, in order to communicate with their owners and purchasers, and in the study of such papers in the Native Office as would show me the special reasons (if any) why restrictions were imposed, or why it had not hitherto been deemed right to allow their removal. These researches necessarily occupied some time. On the 5th of January, 1886, I arrived in Tauranga, to commence there the public work of the Commission, that being the district where inquiry was most urgently called for; but it was not till the 19th January that any of the parties summoned were able to attend with witnesses before me. I have therefore been engaged in hearing cases from the 19th January till the present time.

5. Up to the present time the Commission has sat in Tauranga, Whakatane, and Rotorua, engaged in hearing evidence and making reports. Thirty-two cases have been dealt with, and 118 witnesses examined on oath. Seventeen cases have been reported upon as to the merits, eight cases have been withdrawn by the parties, and seven I have refused to report upon, it not being within my province to deal with them. In the seventeen cases reported upon the evidence has in each case been taken down in writing. That of the Maori witnesses has been recorded in their own words by the interpreter, and his translation, as given at the time, has been written down by the Commissioner, and all evidence has been authenticated by the signature of each witness appended to his own testimony. If, therefore, any report of the Commissioner should be called in question, the materials on which it is founded are all on record.

6. In order to carry out the instructions in my Commission that I should “ascertain whether the persons to whom the land was proposed to be alienated had acted with good faith to the Maoris,” I have in each case inquired into all that had been done in the course of the negotiations; but I found it by no means an easy task to ascertain the existence of improprieties, when such may have existed in the conduct of purchasers or their agents; my difficulty arising partly from the one-sided nature of the inquiry, partly from the fact that large numbers of the Natives interested in the principal lands under consideration had departed to the gumfields just before my arrival in Tauranga, and partly from the disinclination of the Maoris brought before me for examination to disclose any misconduct, even although they had suffered from it. The Natives whom I examined

seemed to be actuated by a vague fear that they might lay themselves open to criminal proceedings, ending in imprisonment and loss of character. I have been informed that threats of such proceedings have been actually made, but cannot vouch for the truth of the statement, not having judicially inquired into it. Such being the attitude of the Natives, the only chance I had of reaching the facts where misconduct had taken place was through the quarrels of rival purchasers or from the intrinsic evidence afforded by the accounts kept and receipts taken during the negotiations of purchasers, and upon the documents of transfer.

7. When commencing my investigations I had some doubts as to the weight I ought to attach to the advertisement inserted in the *Bay of Plenty Times* on the 12th November, 1878, by the then Commissioner of the Tauranga Confiscated Lands, Mr. J. A. Wilson. The advertisement was as follows :—

“The following telegraphic message is published for general information.—J. A. WILSON, Commissioner, Tauranga District Lands :—Wellington, 8th November, 1878, 5 p.m.—J. A. Wilson, Esq., Tauranga,—I am directed by the Hon. the Premier to request you to be good enough, as Commissioner of Tauranga Lands, to inform the Natives that all the lands returned to them in the Tauranga District, the titles to which you are now investigating, including Otawa and Waitaha Blocks, are inalienable. The Native Affairs Committee has advised that the Natives should not be allowed to dispose of these lands; that, should they desire to lease them, they must do so by auction or public tender.—H. T. CLARKE, Under-Secretary.”

This advertisement, which only appeared once, was, as I am informed, published in consequence of a report of the Native Affairs Committee, brought up to the House of Representatives on the 24th October, 1878, containing the following paragraph : “6. That, in the opinion of this Committee, no other portion of the land in the Tauranga District which was returned to the Natives by the Government should be alienated by way of sale, or by way of lease, for a longer period than twenty-one years; and then only by public auction or tender.—JOHN BRYCE, Chairman.”

8. Notwithstanding this advertisement, much speculation in Tauranga Native lands took place in 1878, 1879, and 1880, and purchasers seem not to have been in the least deterred by it—if, indeed, they were aware of its existence. The Government, too, treated the advertisement as a dead-letter. His Excellency was advised to remove, and did remove, restrictions on many purchases made subsequently to its publication, not only in favour of persons who had settled upon and improved their purchases before applying, but also in favour of speculators who had not settled—and apparently did not mean to settle—on their lands. It was even sworn before me that restrictions were removed in one instance where the purchaser had only as yet obtained one-fourth of the signatures of the Native owners. Therefore, when it was urged that these Tauranga purchases had all been negotiated during 1878, 1879, and 1880, I felt bound to consider them with regard to the policy of the Government at that period, and not with regard to a subsequent policy, which was not acted upon till after the purchasers before me had irrecoverably embarked their capital in these enterprises.

9. I observe that the experienced and reliable witnesses, both Native and European, who were examined before the Native Affairs Committee on the Native Lands Disposition Bill in 1885, lamented the prevalent practice of trafficking in Native lands before anything is settled as to ownership or boundaries, and described the evils to which it has given rise. My experience so far amply confirms those views. At the time when the Tauranga purchases before me were initiated—that is, in 1878, 1879, 1880—and the rival agents were struggling to secure the blocks in advance of each other, none of the lands had gone through the Commissioner's Court nor through the Native Land Court, their boundaries were undefined, no reserves for the permanent use of the Natives had been selected, and the conflicting claims of contending tribes and individuals had not been adjusted. Consequently the dealings of the purchasers and their agents in making their money-payments and in taking signatures to transfers were very loosely conducted. In excuse for this looseness, it was pleaded that purchasers were compelled to come into the field before anything was settled, because otherwise they would lose their chances as against their competitors. To convince me that I ought not to deal too stringently with what was the universal and unavoidable practice, it was stated that in all the cases in which the Government had allowed removal of restrictions the early transactions had been conducted in a similar manner, and had nevertheless passed the Frauds Prevention Commissioner, as well as the Government, and finally it was urged that all the cases before me in which I might report favourably would at a later stage have to pass the Frauds Prevention Commissioner, who might safely be trusted to protect the interests of the Natives.

10. I gave to the above considerations such weight as they seemed to me to deserve—that is, I made all reasonable allowance for informality and looseness under the circumstances; but I felt that such looseness opened a wide door for fraudulent practices, and therefore demanded from me a stricter scrutiny into every detail of the transactions than would otherwise be required; and the result of my investigations has shown that the agents or middlemen had in cases before me taken advantage of this looseness to defraud both their employers and the Natives. Their employers were debited with moneys that never reached the Native vendors, while the Native vendors were charged with these moneys although they never received them. I found also that receipts were taken from Natives for payments in such a manner that they could be easily manipulated, and were, in fact, manipulated, to represent payments on transactions to which they did not belong. I found that in some instances receipts were so handled as to cheat the Native vendor, by charging him with payments made to him for survey-work as payments on account of land. I found blank, or nearly blank, receipts, signed ready to be filled up, but not filled up. I found blank transfers signed for the transfer of shares in a certain block of land, and afterwards filled up with the addition of another block, the property of the same owners, but not sold by the majority of those who had so signed. I found a receipt given for a payment on a certain block altered fraudulently into a receipt for a payment on another block, which I had every reason to believe was never sold by the chief (now deceased) who gave the receipt. (The gentleman who altered the document offered no explanation whatever in opposition to the evidence sworn before me that

such alteration was wholly unauthorized and improper.) I found receipts for the same payment entered in different places for different blocks. I found signatures of certain vendors signed in their own handwriting, and other signatures of the same vendors signed by "mark." I found one signature of a vendor in bold handwriting, and another of the same vendor written as if he had been intoxicated. I found whole batches of receipts signed by the "mark" of illiterate vendors, without any attestation by any person that such mark had been put there by the person whose name stood against it as having received the money. In short, I found that the books and documents purporting to record the transactions of the agents and sub-agents were so manipulated and altered in different handwritings as to entirely destroy their reliability, especially taken in connection with the instances of actual fraud sworn to before me. In this case, which was one of the most tedious and keenly-contested of those brought before me, the hostility of the rival purchasers, who had lost money by paying the same Natives for the same land that was being sold to the claimants before me, aided me in discovering some of the above facts.

11. When the investigation of the cases last referred to had made some progress, and it began to be understood that inquiry before me was not to be a mere formal one, in which everything doubtful could be glossed over and explained away by the production to me of a document called "Form C," some of the cases set down were withdrawn.

12. As far as possible I have avoided being influenced by political or general considerations in judging of matters laid before me; but in some instances it has not been possible entirely to avoid such considerations. In cases where land had been awarded to Native soldiers as part payment for their military services, or awarded to chiefs in payment, or part payment, for services rendered to Government in the purchase of Native lands, I have treated such awards, not as I should have treated lands held under hereditary tribal right, but as lands given to the Native owners in lieu of money. I therefore considered that the Native recipient was entitled to turn the land into money whenever he desired to do so, and that restrictions on such awards of land could only have been placed upon them in order to protect the Native against fraud. I accordingly deemed it my sole duty to see that the Native vendor had been fairly dealt with by the European purchaser, and was getting fair value for what he was selling, and if satisfied on these points I have reported in favour of removing restrictions on sale.

13. I have favourably viewed cases where Europeans already in possession of Native land under some agreement with the Natives had settled on the land, and had expended their capital in improvements. In a case before me at Whakatane, in which the lessee had shown considerable energy in improving his twenty-one years' leasehold run of fifteen thousand acres, and is regularly employing Maori labour in a manner calculated to develop habits of industry among the Natives, I have gladly recommended the granting of an extended lease of thirty-three years for His Excellency's sanction.

14. During the investigation of the Native lease last referred to the Commission has been incidentally the means of bringing under the notice of the Government some evils which might otherwise have been left without alleviation. The two tribes who are the owners of the leasehold in question—the Patuwais and the Whakatane section of the Ngatiawas—had long been suffering under a grievance which sorely tried their patience and loyalty, but which the Commissioner was fortunate enough not only to remedy in the present to the satisfaction of all concerned, but also to prevent any recurrence of it in the future.

15. In the case of applications where no existing negotiations for transfer to a purchaser were disclosed, I have declined to enter on the matter, considering such applications as equivalent to a request that I would report on the expediency of the total removal of restrictions on sales from Natives to Europeans, a question which I deem to be a purely political one, for the consideration of Government or Parliament, and quite outside my province.

16. In concluding this general report, I wish to make one observation, suggested by the evidence I have taken—viz., that the system of inquiry before the Frauds Prevention Commissioners is useless for the prevention of fraud while the "Form C," which plays so prominent a part in proving before the Commissioners the *bona fides* of sale, is a positive cloak for fraud.

17. So far as I can judge, the work of the Commission is nearly half accomplished. From examination of the papers filed in the Native Office, I have every reason to believe that I have already reported on the heaviest and most important cases on the list.

GEORGE ELLIOTT BARTON,
Commissioner, &c.

14th May, 1886.

APPENDIX.

In illustration of paragraph 16 of the preceding report, I place here, by way of appendix, the substance of a complaint of alleged frauds laid before me by way of caveat to prevent the removal of restrictions on the alienation of certain blocks in which the complainant is interested. As the statements are *ex parte*, I suppress names of persons and lands; but the depositions and documents which set out the whole case are ready for production when required.

The applicant (whom I shall call Mrs. A.) had a strong objection to selling her interest in the various blocks in which she was entitled as an owner. She is married to a European, and has eight children; and her husband, who is almost blind, has the same disinclination as his wife to parting with their land. Therefore it became important for Europeans who were negotiating for blocks in which Mrs. A. was interested to find some means of getting rid of their opposition.

The two following instances will show the unscrupulous character of the devices resorted to for that purpose:—

Two large blocks not far from Tauranga were being purchased by Europeans, whose agent, on applying to Mr. and Mrs. A. to sell their interest, was met by a positive refusal. The agent then made a proposal to them that if they would consent to sell on the proposed terms the purchasers would, on their part, let them have at the same rate of purchase-money two hundred acres of land at a spot where they greatly desired to have it. This land had not then been purchased from the Natives; but the agent informed Mr. and Mrs. A. that his principals were then buying the block on

which it was situated, and would, when it was purchased, be in a position to transfer the two hundred acres to them. Mr. and Mrs. A. took the bait at once. They wanted this particular two hundred acres, and agreed to sell Mrs. A.'s interest in her land at 7s. 6d. per acre, and receive instead this two hundred acres at 7s. 6d. per acre. The agent, having thus bought off their opposition, told them to come in a few days to sign an agreement with the purchasers to carry out the agreement. Accordingly, the place where the promised two hundred acres were situated having been determined on, all parties met two days after to sign an agreement that had been prepared in the interval by the purchasers. This agreement, now in my possession, is in English, and has no Maori translation indorsed upon it. According to the sworn testimony, this agreement was translated into Maori in the presence of the vendors and one of the purchasers (who had by their agent made the verbal agreement with Mr. and Mrs. A.) as if the writing was in exact accordance with the verbal agreement made two days before; and the person who so mistranslated it was the very agent who had made the verbal agreement with Mr. and Mrs. A. The document was then signed without being read over in English, and was left in the possession of the purchasers' solicitor; and Mr. and Mrs. A. afterwards fulfilled their part of the bargain by transferring their interest at the agreed price to the purchasers aforesaid. But when Mr. and Mrs. A. came to enforce their side of the agreement they found that the document they had signed differed entirely from the actual agreement made and from the translation of it by the interpreter in the presence of the vendors and one of the purchasers.

So far the story, if contradicted by the other parties present at the interview, would be too doubtful in its character to be credited if there were not intrinsic evidence favourable to Mr. and Mrs. A.'s side of the case. That intrinsic evidence is this: In the written agreement given to Mr. and Mrs. A. the stipulation in their favour gives only a "worthless shadow" in exchange for their consent to sell their land—which, it must be remembered, they did not wish to sell at all, and which they gave at a price they would never have accepted but for the stipulation that they were to have the land they wanted for the same price per acre. The stipulation inserted in the written agreement is in the following words: "And this deed also witnesseth that, in further consideration of the aforesaid covenant (*i.e.*, the covenant to sell at 7s. 6d. per acre), the said [purchasers] do and each of them doth hereby undertake and promise to use their best endeavours and their influence and time without charge to obtain for and secure to the said [Mrs. A.] and her heirs, or as they may direct, two hundred acres of land in [describing the place], to be marked out by the transferrees, at the actual proportionate cost of the same to the said [purchasers], or whomsoever may purchase the same from the Native owners thereof; but a greater amount than 10s. per acre is not to be charged."

The land in question has never to this day been purchased by these purchasers nor by any one else from the Natives, and the solicitor of the said purchasers recently described the aforesaid written agreement to Mr. A. as a document "not worth the paper it is written upon"—a description with which I have no fault to find.

Since the above statements were made to me by way of caveat, I have found that the restrictions on these two blocks were removed so long ago as 1882, and of course the case must have passed through the ordeal of the Frauds Prevention Commissioners' inquiry. It is scarcely possible to suppose that this agreement was produced before that gentleman by the purchasers. Mr. A. had no notice of any of the proceedings for completing the purchase, and was not aware of its completion till I ascertained the fact from the Lands Office.

The other transaction, which illustrates a different mode of getting rid of owners who will not sell, is as follows:—

The same Mrs. A. was interested in a large block of land (29,000 acres). She attended the Land Court, and established her claim to the satisfaction of the Judge, and then she and her husband were telegraphed for to return home immediately, on account of the serious illness of two of their children. This necessity to leave being represented to the Judge, she was informed by him that she might leave, and that the interest she had proved before him would be protected. Before leaving, the purchasers offered her £300 for her share, but Mr. and Mrs. A. refused to sell on any terms. The moment she and her husband had gone away, the European purchasers saw their opportunity. They arranged with the tribe that, as Mrs. A. would not sell, her name should be left out of the list, and replaced by that of her cousin, who had no objection to sell Mrs. A.'s share if transferred to her, and to take the purchase-money for herself. Accordingly, the list of names of owners of the blocks was made up, omitting Mrs. A.'s name, and inserting instead that of the more convenient cousin; and when, on the list being presented in Court, the Judge inquired how it happened that Mrs. A.'s name was omitted, the Native interpreter of the purchasers got up and informed the Judge that her cousin's name had been inserted instead of Mrs. A.'s at Mrs. A.'s own express request. Upon this statement being made on behalf of a gentleman of position, in presence of the tribe and of the conductors of the case, the Judge appears to have been deceived into the belief that the omission of Mrs. A.'s name was really by her own desire, and he thereupon passed the list with the cousin's name inserted and Mrs. A.'s name omitted. The cousin then sold and transferred all Mrs. A.'s interest in 29,000 acres to the purchasers; and it was not till long afterwards that Mrs. A. heard a word of the transaction; and, as to the purchase-money, she has never received a farthing.

This case also passed the Frauds Prevention Commissioner in due course; and it cannot be supposed that any of these facts were disclosed to him. Mrs. A. knew nothing of the application to the Frauds Prevention Commissioner to pass the application, and therefore had no opportunity of proving before him the fraud that had been practised upon her.

14th May, 1886.

G. E. BARTON.