1889.

NEW ZEALAND.

NGARARA, PORANGAHAU, MANGAMAIRE, AND WAIPIRO BLOCKS

(COMMISSIONERS' REPORT *RE* DECISIONS OF NATIVE LAND COURT IN RESPECT OF THE).

Presented to both Houses of the General Assembly by Command of His Excellency.

To His Excellency the GOVERNOR of the Colony of NEW ZEALAND.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the undersigned Commissioners appointed by your Excellency's Commission dated the 3rd day of November, in the year of our Lord, 1888, to inquire into the several matters in the said Commission mentioned, and to report upon the same, and particularly whether the decisions of the Native Land Court in relation, among others, to the land known as Ngarara West ought to be given full effect to, or whether sufficient doubt exists as to the correctness of such decisions as to render further inquiry proper, have now the honour to report as follows:—

1. We have carefully considered the petition presented by Inia Tuhata and four others to the Legislative Council during the last session of Parliament, and the evidence adduced by Mr. Morrison, who acted as counsel for the petitioners, and by Mr. Stafford and Mr. Richmond, who appeared on behalf of Wi Parata and others, the opponents. The evidence adduced, together with copies of documents and also copies of the evidence laid before the Committee of the Legislative Council, are annexed to and form part of this report.

2. We find that the name by which the block of land in question is more generally known is Waikanae. Ngarara is properly the name of a portion of the block, which was extended to the whole in 1873. We do not find that this change of name has in any way deceived or misled any of the parties.

3. A large number of witnesses, chiefly Maoris, have been called before us, whose evidence is extremely conflicting. There are, however, several important points with regard to which there is evidence, both Native and European, which seems to us sufficient to support the conclusions at which we have arrived, without attempting to weigh carefully the relative value of all the conflicting statements that have been made.

4. The evidence that has been brought before us has been confined to the claim of Inia Tuhata and his sister Rangihanu, to whom the Native Land Court, presided over by Judge Puckey in 1887, on a subdivision, awarded a small area of about four acres.

5. With regard to the allegations of improper conduct on the part of Wi Parata, some evidence has been laid before us relating to the actions of Wi Parata with reference to the Ngarara Block (1) when the title to the block was being investigated by the Native Land Court in 1873 and 1874; (2) on the occasion of the sale of the eastern portion of the block to the Government; and (3) when before the Court on the subdivision in 1887. We are of opinion, however, that nothing has been disclosed which would justify an interference with the judgment of the Court in 1887. The fact of the Court having been misled, and having arrived at a decision which seems to us unsatisfactory, has arisen not from improper conduct on the part of Wi Parata, but from the fact that the petitioners were not prepared with sufficient evidence to meet the statements made on the other side—namely, that Honi Tuhata, the ancestor through whom Inia Tuhata and his sister claim an interest in the land, had abandoned his interest, whatever it may have been, before the year 1840. The Court adopted the view that there had been such an abandonment, and accordingly awarded to Inia Tuhata and his sister the small piece of land which they were at that time (1887) actually cultivating. The Court appears to have awarded even this small area only on the ground that the names of Inia and Rangihanu were contained in the list of owners adopted by the Court in 1873, and, being in the list, they could not be altogether excluded from the award.

6. The conclusions to which the evidence before us points may be briefly stated. Honi Tuhata, the great-grandfather of the present petitioners, was the chief of a hapu of the Ngatiawa Tribe known as Ngatitupawhenua (afterwards Mitiwai), residing originally in a pa on the bank of the Onaero Stream, in the District of Taranaki. The Ngatitupawhenua pa was not far from another pa on the bank of the same stream inhabited by the Kaitangata hapu. The relation of the Ngatitupawhenua to the Kaitangata is disputed. Some witnesses allege that they are one and the same

hapu; others, while admitting relationship between them, allege that they were in fact distinct hapus. We are of opinion that the evidence before us establishes the fact that the Ngatitupawhenua are a subdivision of the Kaitangata, and that they adopted the name Mitiwai in recent times.

7. Honi Tuhata took part in the migrations from Taranaki to Waikanae and Arapaoa (Picton) between the years 1830 and 1839; and it is contended that he made Arapaoa his permanent home before 1839, and thus lost any right he might have possessed at Waikanae. In opposition to this contention we have the evidence that he took part in the fight at Kuititanga in October, 1839, and was wounded by a gunshot through both thighs. The result of this battle was to establish the Ngatiawa as owners of Waikanae. We have also the evidence of the Bishop of Wellington—the correctness of which we see no reason to doubt—that Honi Tuhata was among the chiefs who welcomed him on his first arrival in Waikanae in November, 1839, and that they (the Bishop and Honi Tuhata) continued to reside in the same pa for a considerable period. The Bishop also vouched to having seen Tuhata at Waikanae on the 1st or 2nd February, 1841, having an entry in his journal which enabled him to fix the date. It is admitted that Honi Tuhata signed the Treaty of Waitangi in Wellington on the 29th April, 1840, under the name "Patuhiki;" and it appears that he went from Waikanae to Wellington for the purpose of signing the treaty and returned to Waikanae immediately afterwards. We find, on referring to the facsimile of the treaty published by the Government in 1877, that Tuhata (or Patuhiki) signed in the presence of Messrs. Williams and Clayton, who, in a footnote, describe him as a principal chief of his tribe. It is further admitted that Tuhata was at Waikanae in 1848, when William King led some of the Ngatiawas back to Waitara; that he came there again about 1855 to take part in avenging the murder of Rawiri Waiaua, which occurred in August, 1854, and again in 1860, when, during a suspension of hostilities in the Waitara war, Tuhata came from Arapaoa and proceeded to Taranaki and took up his abode in the pa on the Onaero Stream, from which he originally came and where he subsequently died.

8. It appears from the evidence of William Jenkins that Honi Tuhata was in Waikanae, and performing acts of authority there in the years 1839, 1840, and 1841. Jenkins is contradicted in one material particular by the witness Boulton. The former states that in 1839 he purchased from the Waikanae Natives, for use at the whaling-station on Tokomapuna, an island near Kapiti, three sheer-legs; that these sheer-legs were cut from a white-pine bush on the Waikanae Block; that he paid Honi Tuhata for them in tobacco and cloth; and that he had special orders from Thomas Evans, the chief headsman of the whaling-party, to make such payment to Tuhata. The witness Boulton, on the other hand, states that the sheer-legs were purchased by himself from the Whareroa Natives; that payment was made to a Native named Ropata; and that Jenkins took no part in the transaction. In view of the long period of time that has elapsed since the sheer-legs were bought, it would be difficult to determine which of these two accounts is correct; but, assuming that Boulton's account is true, we do not think that Jenkins's evidence should for that reason be altogether disregarded, although its value would, no doubt, be materially weakened. The witness Knocks also gives important evidence, and is, in our opinion, trustworthy in all material particulars.

9. Immediately after the death of Honi Tuhata, Inia Tuhata, his grandson, and the father of the petitioners, Inia Tuhata and Rangihanu, returned from Taranaki to Waikanae, and continued to reside there until his death in 1871. His children have continued to reside there ever since.

10. Some evidence has been adduced for the purpose of showing that, though Inia Tuhata and his children resided at Waikane, they exercised no rights of property, and circumstances relating to the driving-off of sheep and payment of rent for their grazing, and also the splitting of shingles, have been brought forward as showing that the Tuhatas were treated as interlopers. There are, however, admissions made by some witnesses called to prove these points which tend rather to the conclusion that in these disputes the Tuhatas were successful in maintaining their claims. (See particularly the evidence of Tamihana te Karu.) No question was raised in 1873 as to the right of the petitioners Inia and Rangihanu to be included in the list of owners adopted by the Court. This appears to us to be inconsistent with the contention that Honi Tuhata had abandoned his interest in the land, although the practice of inserting names merely out of *aroha* is not uncommon. The question of abandonment, so far as we are aware, was raised for the first time at the sitting of the Court in 1887.

11. With regard to the extent of the interest of the Tuhatas in this block, something probably depends upon the relationship existing between the Kaitangata and the Ngatitupawhenua. On this point it seems to us material to notice that one of the most active persons in opposing the claims of the Tuhata family—namely, Tamihana te Karu, acknowledged in his evidence that Honi Tuhata and his own father were first-cousins, and that Tuhata's father was the "elder relative." This seems to show that Tuhata's interest was at least equal to that of other members of the Kaitangata hapu, who ranked as chiefs.

12. Questions have arisen with regard to the effect of an admixture of blood, whether European or from some other Native tribe, in determining the extent of the interests of respective claimants. We are of opinion that these questions are of small importance in this case. We find that, while Wi Parata is a half-caste, Inia Tuhata the elder and his wife were both half-castes; so that any objection arising from an admixture of European blood would apply in some degree to parties on both sides.

13. Having regard to all the evidence that has been brought forward, and particularly to those portions to which we have specially referred, we are of opinion that, in respect of the claim of Inia Tuhata, there is sufficient doubt as to the correctness of the decision of the Native Land Court in 1887 to render further inquiry proper.

14. With regard to the form that such inquiry should take, we are of opinion that a rehearing

should be directed before the Native Land Court. Although the evidence before us has been directed to one claim only, we think it is desirable that the whole of the applications for the subdivision of this block should be reheard. We, therefore, do not recommend the limitation of the proceedings to any particular claim.

15. The proceedings in this case have brought forcibly before us the desirability of making some general provisions for individualising Native titles; and we are strongly impressed with the advantage that would accrue from such legislation in obviating future disputes. Although no such general provisions have yet been made, we think it would be well, in any Act that may be passed in pursuance of this report, to insert a clause providing for the individualisation of the interest of each of the owners of this block.

16. The costs already incurred in connection with this case appear to have been considerable, and no doubt further costs will be necessarily incurred before a final decision can be arrived at. While we are of opinion that there has been a substantial failure of justice in the matter, we do not think that either side can be held entirely free from blame. It seems, therefore, most in accordance with the interests of justice that the estate as a whole should bear the costs of this Commission and of any subsequent proceedings that may be necessary to give effect to this report. The costs of and occasioned by the rehearing, if directed, should be in the discretion of the Court.

We therefore respectfully make the following recommendations: (1.) That the judgment of the Native Land Court, given in 1887 upon the applications for a subdivision of the Ngarara Block, be set aside and a rehearing be directed. (2.) That provision be made for determining, upon such rehearing, the individual interest of each owner of the block. (3.) That a reasonable proportion of the costs of and incidental to this Commission, and all subsequent costs reasonably incurred in and about obtaining the necessary legislation, be made a first charge upon the land contained in the Ngarara Block; and that the costs of and incidental to the rehearing be in the discretion of the Court before whom the rehearing is had. (4.) That such legislation be obtained as may be necessary to give effect to the foregoing recommendations.

Given under our hands and seals at Wellington, this 19th day of December, in the year of our Lord, 1888.

(L.S.) H. G. Seth Smith,
(L.S.) Robert Trimble, } Commissioners.

To His Excellency the Governor of the Colony of New Zealand.

May it please your Excellency,—

We, the undersigned Commissioners appointed by your Excellency's Commission dated the 3rd day of November, in the year of our Lord 1888, to inquire into the several matters in the said Commission mentioned and to report upon the same, and particularly whether the decisions of the Native Land Court in relation, among others, to the lands known as Porangahau and Mangamaire ought to be given full effect to, or whether sufficient doubt exists as to the correctness of such decisions as to render further inquiry proper, have now the honour to report as follows:—

1. We have carefully considered the petition of Te Teira Tiakitai and seven others presented to the House of Representatives, and the evidence brought before the Native Land Court, together with the additional evidence adduced by Mr. Chapman for the petitioners, and by Mr. Morrison for the opponents of the said petition. Such additional evidence is annexed to and forms part of this report. We have also perused the evidence given before the Native Affairs Committee on the consideration of the said petition, a copy of which is also annexed hereto.

2. The minute-books of the Native Land Court, containing notes of evidence and the judgments of the Court on the original hearing and on the rehearing, have been laid before us.

3. The claims to the Porangahau and Mangamaire Blocks were heard together, in the first instance, by Judge Mair and a Native Assessor, and judgment was delivered on the 5th May, 1886. The Court awarded 2,500 acres to the Tiakitai family and to Hori te Aroatua, in consideration of the mana of their ancestor Te Whatuiapiti.

4. A rehearing having been applied for and granted, the case was reheard before Judges Mackay and Scannell and an Assessor, and judgment was delivered on the 1st September, 1887. The Court dismissed the claims of Te Teira Tiakitai and Hori te Aroatua. The correctness of the decision in dismissing Hori te Aroatua's claim is not in dispute. As to Tiakitai's claim, the Courts at both hearings appear to have agreed on all points except as to the descent of the mana of Te Whatuiapiti upon Tiakitai. The evidence before the Court on each occasion has been dealt with in a most careful and painstaking manner by the several presiding Judges, but upon the point at issue between them we are of opinion that the decision upon the rehearing is more in accordance with the general tenor of the evidence.

5. The question whether a claim from mana alone is one that cannot be recognised has been, in our opinion, unnecessarily imported into the case. The judgment of the Court upon the rehearing in 1887 did not depend upon it.

6. We are therefore of opinion that the judgment of the Court upon the rehearing in 1887 in relation to the lands known as Porangahau and Mangamaire ought to be given full effect to.

Given under our hands and seals at Wellington this 19th day of December, A.D. 1888.

(L.S.) H. G. Seth Smith,
(L.S.) Robert Trimble, } Commissioners.

To His Excellency the GOVERNOR of the Colony of NEW ZEALAND.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the undersigned Commissioners appointed by your Excellency's Commission dated the 3rd day of November, 1888, to inquire into the several matters in the said Commission mentioned and to report upon the same, and particularly whether the decisions of the Native Land Court in relation, among others, to the lands known as Waipiro ought to be given full effect to, or whether sufficient doubt exists as to the correctness of such decisions as to render further inquiry proper, have now the honour to report as follows:—

1. We have carefully considered the petitions of Hori te Aunoanoa and Peneamine Waipapa and others presented to the House of Representatives, and the evidence and statements in relation thereto. The minute-books of the Native Land Court and the judgments delivered on the first and second hearings have been laid before us.

2. The judgment of the Court on the first hearing was delivered by Judge Mackay, and the Court awarded the whole of the block to the petitioners, and dismissed the claim of Tuta Nihoniho and those claiming with him.

3. A rehearing having been applied for and granted, the case was reheard before the Chief Judge and Judge Puckey. The Court awarded 10,000 acres—approximately one-third of the whole block—to Tuta Nihoniho and his party, and the residue to the petitioners.

4. The difference of opinion between the two Courts appears to arise chiefly from the different views taken as to a traditional gift of the land alleged to have been made to Iri te Kura. The Court on the first hearing held that the gift extended to the whole block, and was not confined to the portion south of the Waikawa Stream, as contended by Tuta Nihoniho. On the rehearing it was held that the alleged gift was a permission to occupy, extending to the whole block, and that the Whanaua-iri-te-kura and Tuta Nihoniho's ancestors, the Itanga-a-mate, had continued to occupy the land together without dispute down to 1863.

5. The Court upon the rehearing appears to have adopted the contention of neither party as to the nature and extent of the gift to Iri te Kura, and the evidence of occupation by the Itanga-a-mate is such as to raise serious doubts in our minds whether there ever was such occupation at all.

6. Having regard to all the circumstances of the case, we are of opinion that there is sufficient doubt as to the correctness of the decision of the Native Land Court on the rehearing in relation to the lands known as Waipiro to render further inquiry proper.

7. Upon the conclusion of the rehearing, Tuta Nihoniho and his party incurred expense in having the boundary of the portion awarded to him properly surveyed. In the event of a further hearing being directed, and the judgment of the Court on the rehearing not being affirmed, this expense would be wholly lost to them. We are therefore of opinion that some provision should be made for recouping that loss.

We have respectfully to make the following recommendations: (1.) That the judgment of the Court on the rehearing be set aside, and a further hearing be directed. (2.) That, in the event of the judgment on the rehearing not being affirmed, the costs of the survey incurred by Tuta Nihoniho and his party be repaid. (3.) That the costs of such further hearing be in the discretion of the Court. (4.) That provision be made for preserving any legal rights that may have been acquired by lessees previous to the passing of "The Native Land Court Act 1886 Amendment Act, 1888." (5.) That such legislation be obtained as may be necessary to give effect to the foregoing recommendations.

Given under our hands and seals this 19th day of December, A.D. 1888.

(L.S.) H. G. SETH SMITH,
(L.S.) ROBERT TRIMBLE, } Commissioners.

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