

1941.

NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1937.

REPORT AND RECOMMENDATION ON PETITION No. 158 OF 1935, OF HONE RAMEKA AND OTHERS,
RELATIVE TO THE TAKAPAU BLOCK (MOKAU-MANGINANGINA).

Presented to Parliament in pursuance of the provisions of Section 16 of the Native Purposes Act, 1937.

Native Land Court (Chief Judge's Office),
Wellington C. I, 15th September, 1941.

Memorandum for the Hon. the NATIVE MINISTER, Wellington.

MOKAU-MANGINANGINA BLOCK.

I TRANSMIT to you the report of the Court, made pursuant to section 16 of the Native Purposes Act, 1937, upon Petition No. 158 of 1935, of Hone Rameka and others.

Briefly, the Court's recommendation is that, in palliation or mitigation of an allegedly unconscionable bargain made between the Crown's agents and the supposed *quondam* owners of the Mokau Block, a liberal percentage of the net proceeds derived from the sale of the millable timber on the land should be paid by the State Forest Service to the Tokerau District Maori Land Board as a trust fund to be devoted to the tribal purposes of the section of the Maoris concerned. In this recommendation I regret that I cannot, for the reasons hereinafter appearing, concur.

The complaint which was originally made in the petition was, in effect, that an area of land known as Takapau had been erroneously included within the boundaries as laid down for the Mokau Block, and that that area had not passed to the Crown. A somewhat similar point—namely, that the people who disposed of the Mokau Block were not the true owners of the whole of it—was taken on the inquiry before the Native Land Court, and that contention has found favour in the eyes of the Court. On this aspect it is relevant to note certain remarks contained in the report of the Commission on Native Land Laws (G.-1, 1891, p. vi) anent the system of sale and purchase in vogue at the time when the transaction under notice was completed. After describing the procedure followed, the Commissioners say: "No such sales were ever disputed. Disputes as to the correct boundaries might arise, but the contract itself, thus made in public with the tribe, was held irrevocable. One danger, however, always existed prior to the institution of the Native Land Court—the same land might be claimed by two tribes, or two hapus of the same tribe. No purchase from one of such contending parties was held binding by the other. On the contrary, the assumption of title by one of several claimants, emphasized by such a sale, made the other claimants more fierce and determined in the assertion of their rights." There is no suggestion that the Mokau purchase was conducted otherwise than after the usual manner; it is difficult, therefore, to escape the conclusion that the fact of the sale of the land to the Crown must have been a matter of common knowledge amongst the Natives in the district. It is to be remarked that the survey of the block was completed some months prior to the sale. There is no evidence of there having been any dispute at the time of the sale, nor is there any tradition of there having been, until recently, any contest touching the ownership of the land; and the absence, over so long a period, of the attempted assertion of any claim to the land, or any part of it, by others can only be indicative of an acknowledgment of the rights of those who did set themselves up to be the owners. And if there be any foundation to the claim now being pressed that other sections of the Natives were entitled to an interest in the land, their acquiescence, and that of their descendants, in the *status quo* for so inordinate a length of time must deprive the latter of a right to any measure of relief under that head.

Turning now to the matter which has been pointed to as being the crucial test of the good faith of the Crown in the deal—that of the purchase price paid to the Natives. The sum of £240 for 7,224 acres of rich kauri forest is averred to have been an outrageous price. Now, it may be premised that from the rise of the colony the intrinsic merits of kauri as timber, at all events for certain specific purposes, were recognized—witness, for example, the Proclamation put forth by Governor Hobson in 1841 which, after reciting that serious depredations had been committed in the kauri forests of New Zealand, and that Her Majesty had been pleased to direct that effective means should be taken for the preservation of kauri pine for the use of the British Navy, notified that all persons found stealing, cutting, or destroying kauri pine would be prosecuted with the utmost rigour of the law. None the less, it is obvious that at the time when the purchase was made there was no market for

timber in the sense that there is a market to-day. Kauri, like other wood, abounded, and with the supply so greatly in excess of the immediate demand, whatever value was to be attributed to it was a value *in futuro*. To have attempted then to assess a prospective value for it with any particularity would have been to enter upon an almost trackless field of speculation. When reporting on the 1st July, 1858, to the Land Purchase Department, the District Commissioner expressly mentioned that the block was chiefly in forest, comprising some very fine kauri and other timber; so it can be presumed that in fixing the price, account of that fact, to the extent that the existing circumstances then required, was taken by the authorities. To suggest otherwise is to impute improper or dishonest motives to the Purchase Commissioners and even to the Government itself—an untenable proposition. It may be that, having regard to the present-day values induced by the depletion of the country's timber resources, the consideration for the sale seems inadequate, but the transaction must be looked at in the light of the conditions prevailing at the time (1858): to judge it by applying existing standards of timber values is simply to be wise after the event. The Crown, in addition to laying out the purchase-money, has for many years borne the risk of the destruction of the forest by fire and other agents, as well as the cost of protecting it. It is a fair assumption that the Maoris would have long since parted with the land, and it is beyond doubt that no private purchaser would have saved the timber over till now. Just because the Crown has, in preserving the timber, created an asset which has become very valuable, the Natives cannot be heard to say that the bargain which was made with their forebears was an inequitable one. The principle stated by Judge Maning, reporting as one of the Commissioners on Hawke's Bay Native lands alienation (G. 7, 1873, p. 45) is applicable: "In all matters of buying and selling land, as well as everything else, the parties concerned, doubtless, as a rule each endeavours to make the better bargain; . . . but so long as both parties understood the terms of the agreement, and fulfilled them, and that there was nothing plainly inequitable in the bargain itself, I do not think the seller should be given any exceptional advantage in endeavouring now, after years have passed, during which the purchaser has been in undisturbed possession, to shake the title of the purchaser of the land merely because he, the seller, now thinks he might have made a better bargain, and complains boldly that he never sold at all, or never received payment, or that the payment agreed for, and paid, was inadequate."

It was laid down in *Wi Parata v. The Bishop of Wellington* (3 J.R. (N.S.) S.C. 72 at p. 79) that transactions which the Natives for the cession of their title to the Crown were to be regarded as acts of State and, therefore, were not examinable by any Court. Unless, in any particular case, it is clear on the face of it that some mistake or omission has occurred or that some real injustice has been perpetrated, it seems to me that public policy requires that an appeal be made to some such rule to meet any claims which may be made in respect of these old purchases. It is patent that if this particular rule can be attacked, many others might, by the same or similar tokens, be impeached—a state of affairs which cannot be contemplated with equanimity. It is neither in the interests of the State nor of the Natives that contracts anciently entered into, whether with the Crown or private persons, should be the subject-matter of endless review, particularly so in the case of the Natives, for their minds are unsettled, and they are easily misled by the expectation of great gains, with the result that their substance is consumed in what must prove to be fruitless and abortive proceedings.

I have no recommendation to make in the premises.

G. P. SHEPHERD, Chief Judge.

In the Native Land Court of New Zealand, Tokerau District.—In the matter of section 16 of the Native Purposes Act, 1937; and in the matter of Petition No. 158 of 1935, of Hone Rameka and others, relative to the Takapau Block (alleged to be part of the Manginangina Block).

PURSUANT to section 16 of the Native Purposes Act, 1937, the Native Land Court reports upon the claims and allegations in Petition No. 158 of 1935 as follows:—

(1) Two hearings took place before Frank Oswald Victor Acheson, Judge, one at Kaikohe on the 17th and 18th January, 1939 (B. Is. 17, folios 35 to 75), and the other at Auckland on the 27th and 28th June, 1939 (B. Is. M.B. 17, folios 147 to 175). The Hone Rameka section of the petitioners was represented by Mr. E. C. Blomfield, while the Tamati Arena Napia section was represented by Mr. Hall Skelton. The Crown was represented by Mr. V. R. Meredith, Crown Solicitor, Auckland, assisted by Mr. O. A. Darby, of the Lands Department.

(2) The Court found the petitioners' case to be weak on technical and legal issues but strong on the moral issues involved. The Court found the Crown case to be strong on the technical and legal issues but weak on the moral issues involved. The protection guaranteed by the Treaty of Waitangi to Maori tribes, chiefs, families, and individuals in respect of their lands seems to have been overlooked by the Crown's officers participating in the negotiations for the purchase of the land in question. An otherwise praiseworthy zeal to protect the Queen's and the nation's purse seems to have thrown into the background and even entirely submerged the Crown officers' collateral duty to protect the Queen's and the nation's honour. So 7,224 acres, comprising probably the lordliest kauri forest (now Puketū State Forest) in New Zealand, was bought for a pittance (£240, or 8d. an acre) from a few chiefs who by no stretch of the imagination could, in Maori custom, have been the sole and true owners. Contrast this with the instructions given by the Marquis of Normanby on 14th August, 1839, to Captain Hobson on his departure on his historic mission: "All dealings with the aborigines with their lands must be conducted on the same principles of sincerity, justice, and good faith as must govern your transactions with them for the recognition of Her Majesty's sovereignty in the Islands." The Court's report will show that a grave injustice was done in the name of the Crown to numerous

innocent Maoris by this purchase, but that various Maori leaders of that day (1859) and of several generations following were also directly culpable for their failure to safeguard and uphold the rights of their tribesmen. The Court will hold that the burden of that injustice and that neglect should be borne partly by the Crown and partly by the Natives, but not wholly by the Natives as at present.

(3) For the Tamati Arena Napia section of the petitioners, Mr. Hall Skelton contended:—

- (a) British property law applied in 1859. Sale deed was not properly executed. Some sellers signed by proxy. Vendors were not the true owners or all the owners.
- (b) Natives thought the "Mokau" Block was being signed, as that was the only name in the deed. The words "Mokau and Manginangina" on the plan would be unnoticed.
- (c) Boundary names were wrongly placed, and misled Natives into thinking they were selling the Mokau Block, farther north.
- (d) Sale of 7,224 acres of valuable kauri forest for only £240 was an unconscionable bargain and therefore should be voided. Purchase Officer Kemp knew it was rich kauri forest, close to Waimate, and with a road.
- (e) Kauri timber was valuable in 1859. This forest was close to settlements, roads, and sea. Milling industry was in full swing in 1859 for settlers' and Auckland needs.
- (f) Same low price per acre was paid for valuable kauri forest as for poor scrub country. It was transactions such as this which brought into being the Native Land Court in 1862.
- (g) Wi Hau and other sellers had no right to sell interests of other individual Maori owners.

(4) For the Hone Rameka section of the petitioners, Mr. Blomfield contended:—

- (a) His clients or their elders were not parties to the sale in 1859, did not know about it, and should not be bound by acts of those who signed.
- (b) Principles of Treaty of Waitangi were not observed.
- (c) Vendors, witnesses, and Purchase Officer put through various other sales. Mr. Kemp wrote that Wi Hau was "the seller" of this 7,224 acres and was "a useful servant of the Government." Mr. Kemp acted both as Purchase Officer and District Commissioner, and thus had to check and scrutinize his own purchases.
- (d) The big question of "surplus lands" is involved, because of the inadequacy of the price paid.
- (e) The sale deed affected "Mokau," not "Manginangina" (including "Takapau"). Various sub-tribes had rights in Manginangina. Even in the Ngatiwhiu sub-tribe, many others were entitled besides Wi Hau. The vendors were not the true owners or the sole owners. No proper inquiry was made in 1858-59 to ascertain who were the rightful owners. Crown officers had no right to accept Wi Hau's statement that he was the owner.
- (f) £240 for 7,224 acres of rich kauri forest was an unconscionable and even outrageous price. The 200 acre reserve awarded to certain persons was merely a sop. Kauri timber in 1859 had a good market value.
- (g) Natives continued to occupy the land for many years after 1859, using it for orchards, cultivations, and pigeon-hunting without interference from Crown.
- (h) Deed of sale did not comply with the English conveyancing law as to execution and witnessing. It should have been under seal and with all the formalities of a deed to comply with the Statute of Frauds. There is nothing to identify the marks of signatories and nothing to prove the authority of those who signed for others.

(5) Mr. Meredith, for the Crown, contended:—

- (a) Deed plan indicated survey. Description in deed tallied with survey and identified the 7,224 acres. Therefore name "Mokau" was immaterial.
- (b) Signatories to deed were rangatiras of Ngatiwhiu and recognized by Magistrate Clendon as leading chiefs. One signatory was Hare Napia, grandfather of Mr. Hall Skelton's principal client, Tamati Arena Napia. Also, one of the four who received the 200 acre reserve was Tamati's father, Arena Napia. Therefore the sale must have been well known to Ngatiwhiu.
- (c) No applications for investigation of title for either Manginangina or Takapau had been lodged until recently, although surrounding blocks had been investigated in 1866, 1875, and 1878.
- (d) On investigation of title for adjoining Waitaroto and Omataroa Blocks in 1866 and 1875 the elders of present petitioners did not claim inclusion.
- (e) Early plans of adjoining blocks showed Manginangina as "Government land," including the portion now claimed to be "Takapau."
- (f) The petitioners had not definitely indicated location of "Takapau."
- (g) Hare Napia said in 1876 that Native title over the whole of Manginangina had been extinguished.
- (h) Mr. Hall Skelton's clients claimed, *inter alia*, that other land called "Mokau" has been sold, but not Manginangina. Mr. Blomfield's clients, however, did not press this view.
- (j) Only two of the signatories to the deed did not sign personally. In 1859 chiefs always signed for their tribes. The claimants were descendants of the persons who signed the deed and received the £240 and the 200 acre reserve. After a lapse of eighty years it was unreasonable to raise allegations of fraud. Execution of deed was in accordance with the custom of the time.

(k) The price £240, or 8d. an acre, for 7,224 acres was on a par with the prices paid by the Crown for other large areas set out below :—

	Area (in Acres).	Price Paid.	Price (per Acre).	When Purchased.	Remarks.
<i>Bay of Islands District.</i>					
Oruru Block ..	15,000	£ 350 0 0	s. d. 0 6	Sept., 1856 ..	..
Tanairi ..	7,000	300 0 0	0 10	Dec., 1856 ..	Bush.
Muriwhenua South ..	36,385	1,400 0 0	0 3	Feb., 1858 ..	..
Wharemaru ..	13,555	400 0 0	0 7	Feb., 1858 ..	..
Mawhe ..	5,000	450 0 0	1 8	Jan., 1859 ..	..
Mokau ..	7,224	240 0 0	0 8	Jan., 1859 ..	..
Kawakawa ..	15,000	1,000 0 0	1 4	June, 1859 ..	..
Kohimaru ..	11,000	400 0 0	0 8	Aug., 1859 ..	Bush.
Waiake or Upper Aotere ..	6,950	220 0 0	0 7	Aug., 1959 ..	..
Pohoke ..	6,000	300 0 0	1 0	Sept., 1859 ..	..
Maungataniwha East ..	8,469	388 0 0	0 11	July, 1862 ..	Bush.
Maungateke ..	11,175	509 0 0	0 11	July, 1862 ..	..
<i>Whangarei and Kaipara Districts.</i>					
Waikiekie ..	12,000	400 0 0	0 8	Oct., 1856 ..	..
Pakiri ..	38,000	1,070 0 0	0 6	Mar., 1857 ..	..
Tatamariki ..	12,000	350 0 0	0 5½	April, 1857 ..	..
Ika-a-rangarei ..	8,000	500 0 0	1 5	Dec., 1857 ..	..
Okahu ..	18,000	600 0 0	0 8	Dec., 1857 ..	..
Mata ..	11,108	600 0 0	1 1	Feb., 1858 ..	..
Matakehe ..	68,000	2,000 0 0	0 7	Mar., 1858 ..	..
Kaukopukopa East ..	7,200	500 0 0	1 4	Dec., 1858 ..	..
Paparoa ..	15,021	500 14 0	0 8	Jan., 1859 ..	..
Arapokue ..	9,500	350 0 0	0 9	Jan., 1859 ..	..
Kaukopukopa West ..	5,223	300 0 0	1 1½	Jan., 1859 ..	..
Pukekaroro ..	8,458	422 18 0	1 0	Aug., 1859 ..	..
Waikeriawera ..	12,758	500 0 0	0 9	Aug., 1859 ..	..
Oraowharo ..	30,000	1,200 0 0	0 9	Jan., 1860 ..	..
Mirowhakatiki ..	5,500	300 0 0	1 1	Nov., 1861 ..	..
Ruatangata ..	5,450	300 0 0	1 1	Nov., 1861 ..	..
Hikurangi ..	12,000	600 0 0	1 0	Jan., 1862 ..	..
Maungaturoto ..	6,815	511 2 6	1 6	May, 1862 ..	..
Awakino ..	16,000	500 0 0	0 7½	28th March, 1854 ..	..

(l) In 1859 Manginangina (including what the Natives called “Takapau”) was a wilderness, with very little value for any timber in it. Natives made no claim to it until value of forest had been greatly increased by New Zealand’s progress and heavy expenditure of public funds.

(6) In view of the importance of the case the Court has set out above and at some length the main contentions of counsel, and will now deal with them under various headings :—

(7) *Long Delay in Claims.*—The petitioners’ case was seriously prejudiced by the lapse of eighty years. As a result the evidence of Native witnesses was extremely weak and unconvincing, except in the case of Mr. George Marriner. Counsel for petitioners had to fall back on facts plainly evident from the existing records, and also rely on the moral issues. Counsel for the Crown was entitled to stress the long and quite unreasonable delay, for which the Natives had been able to give no satisfactory explanation. The Court holds that such delay must necessarily weigh heavily against the Native case, but that British justice will not preclude a reasonable measure of redress if other considerations justify it.

(8) *Identity of Land sold.*—Mr. George Marriner’s was the only Native evidence which showed care in preparation, and it raised a doubt in the Court’s mind as to the location of certain place-names. However, this doubt was not strong enough to justify rejection of evidence based on the survey (Plan 1166) of the 7,224 acres by Mr. Fairburn in 1858. It is hardly possible now to disprove the accuracy of place-names entered on a survey plan over eighty years ago. The Court accepts the plan as identifying the 7,224 acres Wi Hau and others sold.

(9) *Name of Block sold.*—The deed says “Mokau.” The sketch on deed is marked “Mokau and Manginangina.” In 1859 there was no Native Land Court in existence with power to investigate ownership and give a block a name. The Crown’s purchasing agent could therefore accept the vendors’ name for a block. Mr. Kemp called it “Mokau.” It turns out now that its proper name was “Manginangina.” Whether the name “Manginangina” ever covered the portion now called by the Natives “Takapau” is not so clear. There is no real proof either for or against. However, the important aspect for the Court to consider is not so much the name itself, but what it signified to the Natives entitled to the land. Here the Court finds some remarkable features in the case. This 7,224 acres was not an

ordinary Native block at all. It was a main watershed block facing north, south, east, and west. Its giant kauri trees could look out upon the waters of the Bay of Islands on the east, to Whangaroa Harbour on the north, to Hokianga Harbour on the west, and to the heart of the Ngapuhi tribal territory on the south. Usually a sub-tribe would in such circumstances claim the right to all the land on its side up to the top of the watershed, and would give that part a name. It seems to the Court incredible that Wi Hau and other Ngatiwhiu chiefs should have seriously claimed the right to name and to sell the portions on the other three sides of the watershed. The Court thinks it more likely that Wi Hau gave the name "Mokau" to the Ngatiwhiu side of the 7,224 acres. The Court cannot believe that Wi Hau or any other Ngatiwhiu chief would have seriously claimed the right to name or to sell the Hokianga side dominated by the mana of famous Tamati Waaka Nene, or the Whangaroa side where Hongi's kinsmen held sway, or the southern side looking towards Okaihau and Kaikohe. Under these circumstances, the name "Mokau" would convey nothing to the other sub-tribes interested in the 7,224 acres. "Mokau" would be Ngatiwhiu's land. If Wi Hau and others sold Ngatiwhiu's land called "Mokau," that would be their concern. To this extent, therefore, the name "Mokau" must have been quite misleading to others than Ngatiwhiu. It could have given them no warning of the sale of their portions to the Crown. Probably this helps to explain the great interest displayed by all Ngapuhi in this inquiry. The Ngatiwhiu are only a fraction of those now claiming to be entitled.

(10) *Right of Vendors to sell.*—It follows from the above that the utmost care and the fullest inquiry on the part of the Crown's officers were called for in 1858-59 before they could reasonably accept the signatories as the persons entitled to sell the whole 7,224 acres to the Crown. If the Ngatiwhiu chiefs led Mr. Kemp to believe that Ngatiwhiu owned the whole 7,224 acres, this would not be reasonable proof that Ngatiwhiu did in fact own the whole 7,224 acres. What inquiries did Mr. Kemp make to satisfy himself that he was dealing with the sole and true owners? The records are silent. There is no evidence that he visited Pupuke in the north, Okaihau or Utakura in the west, Kaikohe or Ohacawai in the south, to inquire of other sub-tribes of Ngapuhi as to whether they claimed the sides of the forest watershed which faced their way. The written record shows clearly that Mr. Kemp regarded Wi Hau, "a useful servant of the Government," as "the seller." Why others joined Wi Hau in the sale is not clear. One of them (Tautahi) was a well-known Ngatiwai chief from far-distant Whangaruru. He must have chuckled at the idea of being asked to sell another tribe's land. Another signatory was from far-off Whirinaki, a district of Hokianga not interested in this land. Some of the other signatories seem to have been genuine Ngatiwhiu, the people on the Bay of Islands side of the block. The Court knows of no grounds for Mr. Kemp's assumption that Wi Hau's mana covered all sides of this watershed block, to the exclusion of the mana of Tamati Waaka Nene and the mana of the Hongi and Hone Heke clans. Was Wi Hau the over-lord of all Ngapuhi? Certainly not. He might speak for Ngatiwhiu by consent of Ngatiwhiu. He could not speak for other sub-tribes. Perhaps this explains the inclusion of surplus names as signatories to bolster up the sale. One name was "Hongi." Who was Hongi? The real Hongi (Hongi Hika) died before 1830, and since his death no one has been allowed to use that name by itself. The Treaty of Waitangi expressly guaranteed the rights of families and individuals, as well as the rights of tribes and chiefs. In the matter of this sale the Crown's representatives did not protect the rights of the families and individuals of Ngatiwhiu. The chiefs of Ngatiwhiu did not protect them either. The Court must therefore hold that the members of Ngatiwhiu are bound now by the acts of their chiefs in 1859 as to the actual fact of the sale, apart from the price accepted for the land. The Ngatiwhiu individuals cannot at this late stage, eighty years after the sale, deny that their chiefs sold Ngatiwhiu's rights in this land. All that they can question now is the price paid to the chiefs who represented them. Even that right is adversely affected by their long delay in claiming redress. As to the rights of other sub-tribes, the Crown claimed that they did not exist. Mr. Meredith stressed the fact that Wi Hau was an owner in certain adjoining lands. The Court comments that Wi Hau (Wiremu Hau) was—

- (a) One out of five owners in Mokau (No. 1), adjoining on the north (investigated 1866).
- (b) One out of twenty-two owners in Mokau No. 2, adjoining on the north (investigated 1878).
- (c) One out of two sellers in Mokau No. 3 (Awarua), adjoining on north (sold in 1839). The fact that he sold did not prove he was the owner.
- (d) Apparently not an owner or seller in the Matawherohia Block, adjoining on the north-west (sold in 1859).
- (e) One out of seven owners in Waitaroto Block, adjoining on south-west (investigated 1866).
- (f) One of the sellers of land on the south in 1836 (Ormond's claim). The fact that he was a seller did not prove ownership.
- (g) Apparently not an owner or a seller of Inumia and other blocks in 1836, adjoining on the east.
- (h) And that one Hamiora Hau was sole owner of Omataroa Block, adjoining on the west (investigated in 1875).

The Court holds that none of these things proved the sole right of Wi Hau (with or without the other signatories) to own and to sell the 7,224 acres in Manginangina. At the most they would prove only that Wi Hau was a Ngatiwhiu chief and an owner in the 7,224 acres. They would not prove that Ngatiwhiu were the sole owners of the 7,224 acres. In view of Wi Hau's participation in so many sales, it is not difficult to see how Mr. Kemp came to regard Wi Hau as a "useful servant of the Government" and accepted him as "the seller" of the 7,224 acres. The Court holds that Mr. Kemp had no apparent justification for regarding Ngatiwhiu and Wi Hau as the rightful owners of the whole 7,224 acres. However, long delays by other claimants have materially strengthened the Crown case and weakened the Native case. The Court holds also that, as the Crown's pre-emptive power was in force in 1859, the Ngatiwhiu sub-tribe had the right to sell that portion of the 7,224 acres which belonged to them,

but had no right to sell any portion which did not belong to them. It was the undue readiness of land-purchasing agents to accept any vendors' assurances of ownership at their face value which led to so many abuses prior to and during the period in question. These abuses (so history says) originated the Maori King Movement and led up to the Maori Wars. They also compelled the Legislature to pass the Act of 1862 setting up the Native Land Court as the proper judicial tribunal to fix Native ownership in land. Prior to 1862, purchasing agents for the Crown seem to have been a law unto themselves, bound neither by the ordinary law as to conveyancing and compliance with the Statute of Frauds, nor by the terms of the Treaty of Waitangi.

(11) *Execution of Deed.*—The execution and witnessing of the deed were certainly irregular and even seriously defective according to conveyancing standards in force at the time for private purchases. However, it has not been proved to the Court that agents of the Crown in those days (1859) were legally bound by such standards in the exercise of the Crown's prerogative, the pre-emptive right. Moreover, the number of signatories and witnesses, coupled with the fact that a 200 acre reserve was afterwards accepted by four members of Ngatiwhiu in terms of the deed, precludes any possibility of fraud in the actual execution of the deed. Had any fraud as to execution of the deed really taken place, it should have been the subject of proceedings soon after 1859. It is far too late now to raise any questions as to the method of execution of the deed.

(12) *Occupation by Natives since 1859.*—Native occupation since 1859 seems to have been limited to the 200 acre reserve where the orchards and cultivations existed and to pigeon-shooting and the bleeding of kauri-trees for gum. The two latter activities could be explained by weak forest control prior to 1900, and therefore were not necessarily inconsistent with Crown ownership. The Court cannot accept the Native evidence that the whole 7,224 acres was a pigeon reserve from 1859 onwards, however it may have been regarded in older times.

(13) *Extinguishment of Native Title.*—*New Zealand Gazette*, 19th August, 1863, page 345, notified that the Native title to the "Manginangina" Block of 7,224 acres, with description as shown and excluding the 200 acre reserve, had been extinguished. This *Gazette* notice did not mention the name "Mokau." Section 87 of the Native Land Act, 1909, provided for lawful extinguishment of Native customary title in cases where land had, during the period of ten years immediately prior to the 1909 Act, been continuously in possession of the Crown as being Crown land free from the Native customary title. The Court holds it is Parliament's privilege, however, to grant redress, notwithstanding lawful extinguishment of Native title by statute or deed, if the circumstances justify redress. In this connection one curious feature is to be observed. Active control of the forest as Crown land seems to have remained in abeyance for over forty years. No evidence of effective Crown occupation of the 7,224 acres during those first forty years from 1859 was given to the Court. No explanation of that lack of effective occupation was offered to the Court. Is it possible that the Lands Department itself doubted the efficacy of a sale by Ngatiwhiu alone for a mere £240 as covering the purchase of the whole 7,224 acres. Delay in upholding claims was not wholly on the side of the Natives. The evidence for the Crown and the representations of Mr. Meredith were curiously silent on this point, thus opening up the possibility that effluxion of time and the absence of Native claims strengthened the Crown claim to the whole area. The Court recommends that the files of the Lands Department, Native Department, and Forestry Department be made available for inspection by the Native Affairs Committee of the House of Representatives. They were not made available to the Court at the inquiry, although extracts were.

(14) *Price paid for the 7,224 Acres.*—The Court now comes to the crux of the whole question—the price, £240, paid for 7,224 acres of rich kauri forest.

The Court points out first that no official figures quoting the quantity of kauri and other timbers in this 7,224 acres (the Puketi State Forest) were given to the Court. This compelled Mr. Hall Skelton to quote £5,000,000 as the probable value of the *sawn* timber likely to be taken from Puketi Forest. The Court has no doubt whatever but that the timber has been accurately appraised by Forest officials and that the figures were available on State Forest files. The Court therefore recommends that the Native Affairs Committee of the House insist upon production of the quantities and present-day values, together with particulars of the market values of the different classes of timber as ruling in the Bay of Islands district in 1858-59. The Court considers, also, that a sketch showing what portions (if any) of the 7,224 acres were in scrub and fern (not forest) in 1858 should be made available to the House. According to the Court's information, the great bulk of the 7,224 acres was in heavy forest and comprised magnificent stands of kauri trees equal to anything found elsewhere in New Zealand. Mr. Kemp's letter of 1st July, 1858, to the Chief Commissioner said that the area (then estimated at 10,000 acres) was "*chiefly forest, comprising some very fine kauri and other timber.*" It is situated north-west of Waimate distant *ten miles, with an available road.* The chief, Wi Hau, a well-known and useful servant of the Government, is the seller." On the 4th October, 1858, Mr. Kemp wrote again to the Chief Commissioner, and said: "I now beg to recommend for the Governor's approval the payment of the above-mentioned sum (£240 for 7,224 acres), which I think *fair and reasonable, and as low as it could be made, taking the ascertained quantity and other favourable points* into consideration." The Chief Commissioner, Mr. Donald McLean, replied on 20th October, 1858, that His Excellency the Governor authorized completion of the purchase at £240. Therefore the Government of New Zealand accepted responsibility for the purchase of 7,224 acres, chiefly kauri forest, from a few chiefs of Ngatiwhiu for £240.

(15) *Was the Price, £240, unconscionable?*—The Court says firmly and definitely that the price was unconscionable and even outrageous, but that the Crown's officers and the Government of the day were not the only ones to blame. Wi Hau and the others who assisted him in this unconscionable bargain betrayed the interests of their own sub-tribe Ngatiwhiu and of its individuals as well as the interests of other sub-tribes which, in the opinion of the Court, must have had rights in the portions of

the 7,224 acres on the other three sides of the watershed. The Court has been puzzled as to what led a man of Wi Hau's high rank to "sell out" on his own people in this way. A possible explanation is that, at somewhere about this period, the setting-up of a Runanga of Leading Bay of Islands chiefs was in contemplation by the Government. In 1861 Mr. George Clarke, Civil Commissioner, reported to the Native Minister a selection of chiefs for the District Runanga for the Governor's approval. Out of eleven chiefs nominated as leading chiefs, only one (Wiremu Hau) had signed the deed of sale in 1859, and Ngatiwhiu had him as its sole representative on the Runanga. The list of chiefs is a significant commentary upon the claim made that Ngatiwhiu owned the whole 7,224 acres and that Wi Hau was "the seller." The point to be noted is that the selected chiefs are described by Mr. Clarke as "supported by the Government and made powerful by large salary and favoured position." There is no evidence before this Court on these proceedings that Wi Hau was offered (in 1859) future favours of this nature, but at least he seems to have secured some reward for his merit as a "useful servant of the Government." The Court now returns to the unconscionable aspect of the 1859 purchase. It is clear from Mr. Kemp's own correspondence that he and the Government of the day were fully aware that the 7,224 acres was "chiefly forest, comprising some very fine kauri and other timber." According to Mr. Kemp's letter of 4th October, 1858, the *quantity* of timber on the block had been "*ascertained*," and there were "other favourable points" for consideration. These "other favourable points" may have related to its nearness to Waimate (distant only ten miles) and "with an available road," as quoted in Mr. Kemp's letter dated 1st July, 1858. Also, there was proximity to Crown lands. The Court, knowing the district well and its closeness to Bay of Islands settlements and inlets, cannot understand how Mr. Meredith, for the Crown, saw fit to describe the 7,224 acres as a wilderness and the kauri-trees as of no market value in 1859. No proof whatever was offered in support of that contention, but the facts must have been available to counsel for the Crown. Why was no evidence led by Mr. Meredith to prove that kauri timber so easily accessible to the sea had no market value in 1859? Counsel for the Natives should have quoted figures. Puketi State Forest is reasonably convenient of access to Hokianga as well as to the Bay of Islands. It is very conveniently placed as regards Waimate and other places, which were settled in 1859.

(16) *Comparison with Prices for other Blocks bought at that Period.*—The schedule of blocks bought and prices paid by the Crown, as submitted in evidence for the Crown case, is most illuminating. Thus we find that Muriwhenua South, a block of 86,885 acres, was bought for 3d. an acre. Now Muriwhenua South lay in the "never-never" country far to the north of Kaitia. It had no roads, no bush, and contained probably 20,000 acres of bare sand. Yet the Court was asked to believe that 3d. an acre for it was comparable with 8d. an acre for the 7,224 acres in Manginangina, a block mostly kauri forest and close to Waimate and a road. A number of the other sections quoted are known to be poor scrub country, difficult of access, and without milling bush. The Court is surprised to see the 11,000 acres in the Kohumaru Block marked as "bush." It is no wonder the Native Land Court had to be established in 1862 to fix ownership and shares if so many large blocks were bought between 1854 and 1862, at the figures quoted, from sellers whose right to sell had not been established by a judicial tribunal. However, again the Court remarks that this injury to Native interests could not have happened but for a certain amount of land-jobbing by chiefs whose right to sell was open to question, and a certain amount of apathy by the rank and file.

(17) *Surplus Lands.*—Mr. Blomfield raised the question of "surplus lands," and claimed that this particular matter was affected by it. A glance at the map indicates the following "surplus lands" close to Manginangina:—

- (a) 2,105 acres and 2,335 acres withheld from James Shepherd's grant.
- (b) 992 acres withheld from Henry Hopkin's grant.
- (c) A very large area (not shown) in the Puketotara Block to the south.
- (d) A smaller "surplus" near the Whakanekeneke Block.
- (e) A "surplus" north of the Waiari River.

These surplus areas were lands which the Crown representatives, after inquiry, found had not been paid for by private purchasers; or, rather, the Crown allowed private purchasers to retain certain areas only, being equivalent in value to the prices paid. The private purchasers were not allowed to retain the "surplus" areas, but instead of handing the surplus back in each case to the Native vendors as land for which the Natives had not been paid, the Crown retained the "surplus" in each case for itself. This action is the ground for various petitions to Parliament and is the biggest unsolved problem between the Crown and the Natives in all the North. Recently part of the Puketotara "surplus" was handed back to the Natives. In the case of Manginangina, however, no check was possible on the adequacy of the purchase-money, as the sale was to the Crown. Only now is it possible for a Court or for Parliament to review the facts as a result of a pressing petition by the Natives.

(18) *Court's Recommendation.*—(a) The Court recommends that such portions of the milling timber on the block as are not required for scenery-preservation purposes be milled commercially in accordance with the State Forest Service plans already in operation, and that a liberal percentage of the net proceeds be paid over from time to time by the State Forest Service to the Tokerau District Maori Land Board. These payments should be accumulated by the Board as a trust fund, out of which to pay legal and other expenses of petition and of the petitioners, and to recompense those who have borne the financial burden of the case. The balance from time to time to the credit of the fund should be used by the Board for such community or tribal purposes as the Native Land Court, after inquiry from time to time in open Court and with the approval of the tribes represented in Court, shall direct.

(b) The Court recommends that such payments to the Tokerau Board out of the net proceeds of the sale of all timber be paid by the State Forest Service quarterly and be not less than a certain fixed amount yearly to ensure reasonable progress in the milling of the timber.

(c) The Court recommends that these quarterly payments continue quarterly for as long a period as the forest is milled commercially, but not less than the minimum specified above, to ensure that the tribes will have a regular source of tribal income for tribal and community purposes.

(d) The Court cannot see its way to recommend that any part of the forest be returned to the Natives, because the Court feels that the Natives were seriously blameworthy for allowing eighty years to pass before bringing on their case against the Crown, and also because the Court feels that Wi Hau, Hare Napia, Arena Napia, and other Ngatiwhiu leaders were parties to the injustice done to the real owners of the land.

(e) In the opinion of the Court the unconscionable bargain made between the Crown's agents and certain Native chiefs in 1859 should be rectified even at this late stage lest the honour of the Crown should be besmirched. At this late stage it will be impossible for any Court to ascertain exactly the names and shares of all living persons entitled to claim through deceased elders who were the true owners in 1859. Therefore the Court holds that it will meet the equities of the case if tribal and community needs of those sub-tribes found by the Court on further inquiry to be entitled to the 7,224 acres can be met out of the percentage of net profits referred to above. The Court, in view of the long delays and the actions of Ngatiwhiu chiefs, cannot see its way to recommend individual payments to any one except by way of recoupment of expenses paid for this case.

As witness the hand of the Judge and the seal of the Court.

[L.S.]

R. O. V. ACHESON, Judge.

Approximate Cost of Paper.—Preparation, not given; printing (151 copies), £10 10s.

By Authority: E. V. PAUL, Government Printer, Wellington. 1941.

Price 6d.]