

1911.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910

(REPORT AND RECOMMENDATION UNDER SECTION 28 OF THE), ON PETITION No. 395/1909,
RELATIVE TO SECTION 21, OPAU NATIVE RESERVE.

Laid before Parliament in compliance with Subsection (4) of Section 28 of the Native Land Claims Adjustment Act, 1910.

In the matter of the Opa Native Reserve, Section 21, situate in Block II, Port Nicholson Survey District; and in the matter of Petition No. 395 of 1909, by Henry Cook, praying for validation of sale to him of the said land.

REPORT OF THE IKAROA DISTRICT MAORI LAND BOARD.

IN accordance with your reference, dated the 23rd May last, of Petition No. 395/1909, Henry Cook, praying for validation of sale of the above-described land, the Board has made inquiry into the allegations in the petition, and begs to submit the following report. None of the Natives were present or represented.

1. The land in question contains 60 acres of a block of land called Opa Native Reserve, which contained 1,575 acres before partition. The partition was made on the 2nd April, 1867. Prior to partition the titles were restricted against alienation except with the Governor's consent. In 1890 Crown grants were issued for all the sections, all of which antevested to the 2nd April, 1867, the date of the partition. These titles, with the exception of the title for Section 21, contained no restrictions against alienation. Section 21 alone was restricted. The reason for this singularity probably lay in the fact that the other sections had previously been alienated with the Governor's consent, and it would have been surplusage to enter restrictions in them after the alienations had been permitted.

2. The original grantee of Section 21 was Tiopira te Mira. She died in 1879. The Court, on the 30th August, 1894, appointed Tahana Kawhe, of Taranaki, and several other Natives of Chatham Islands, to succeed to her interest. By a conveyance dated the 18th October, 1894, all these successors, themselves or by their trustees, conveyed their interests in the land to the petitioner for a price of £1 per acre. This deed, so far as it related to the interests conveyed by the trustees for minors, was approved by Judge Mackay on the 8th November, 1894.

3. When the conveyance was taken, it was not known by the parties (though it could have been ascertained by a search) that the title to Section 21 was restricted. It was assumed to be the same as the titles for the other sections, which were issued unrestricted (see paragraph 1). At the time the conveyance was taken the consideration paid was no doubt fair.

4. The land in question is situated within Mr. Cook's (the petitioner's) other lands. It is steep and rocky, and practically useless to any one except the owner of contiguous land—namely, the petitioner. The present value of Mr. Cook's property of 1,300 acres is between £2 and £3 an acre unimproved.

5. Some of the Native vendors for whom their trustee signed the conveyance in 1894 are known to have but little land left, and in 1896 an application was made to the Court to partition Section 21 so as to put in one parcel the shares of those owners who had practically no land. The Board can only assume that this was done with a view of applying for the Governor's consent to have the restrictions removed from the balance of the block in order to give validity to the conveyance now sought to be validated, or to permit some other sale then in view. The partition was not completed, however, and the whole matter appears to have remained in abeyance from that time up to the date of the petition.

6. The difficulty of the present position has not arisen by reason of any defect in the law or mistake on the part of any public servant, but arises solely by what was, under the circumstances, a pardonable omission on the part of the purchaser's solicitor to search the title to the land before the conveyance was prepared. Mr. Cook has acted in good faith throughout, and he is entitled, we think, to equitable treatment for the purchase-money that has been paid to the Natives. We are of opinion, however, that it would be establishing a dangerous precedent to legalize defective conveyances taken in defiance of restrictions on the title, a precedent which, if once established, would have the effect of emboldening attempts to get hundreds of questionable documents, now happily sleeping, clothed with a legality by statutory process.

7. We think the equities of the case would be met by establishing a charge on the land, and we recommend that the amount of purchase-money paid by Mr. Cook be treated as a charge against the land in his favour.

Given under the seal of the Ikaroa District Maori Land Board, this 1st day of September, 1911.

The Hon. the Native Minister, Wellington.

J. B. JACK, President.

E. NICHOLSON, Member.

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