

- (h.) Hakaraia te Whena died on the 4th April, 1908.
- (i.) On the 6th December, 1905, the Court, by partition order, vested 22 acres 2 roods 33·9 perches, called Manawatu-Kukutauaki 4B 2A, in Hakaraia te Whena. This order presumably was bad in law, because at that time Hakaraia was not possessed of any registered or registerable interest. The order was subsequently amended by substituting Hingaia's name for Hakaraia's, and Hingaia was also awarded an interest of 19 acres 2 roods 39 perches in 4B 2B.
- (j.) On the 14th December, 1908, for the purpose, no doubt, of bridging the gap in the title, the Court made an order appointing Hakaraia te Whena and Mi Otonore as successors to Hingaia.
- (k.) The orders referred to in (i) and (j) were undoubtedly applied for for the sole purpose of enabling the transfers by Hakaraia and Mi Otonore to Bevan and Drake respectively to be completed, for prior to the date of the orders Hakaraia te Whena died. Representations were made to the Court that these Natives had sold their interests, and on these representations the Court made the orders. It has since appeared at least doubtful whether Hakaraia was entitled to the half-share he was awarded, and Mi Otonore's right is even more problematical.
4. On the 20th April, 1903, Judge Mackay recommended the removal of the restrictions from the 42 acres 1 rood 32 perches. On the 6th February, 1907, the Hon. the Native Minister directed the gazetting of an Order in Council removing the restrictions, but, as the title to the land was found to be irregular, the Order in Council was not issued.
5. The transfer to Mr. Drake is from Mi Otonore, and is for an undivided share equal to 19 acres 3 roods 1 perch in Manawatu-Kukutauaki 4B 2. It is undated, but the translation by the interpreter is dated the 3rd October, 1903, and, as a payment on account of purchase-money was made to the Native on the same day, the presumption is that the transfer was signed on the 3rd October, 1903. The payments made by Mr. Drake are: On the 3rd October, 1903, £32; the balance of the purchase-money, £8, has since been paid to Mi Otonore, but the date is not known.
6. From the above recital of the title, and by comparing the date of payment of the purchase-money with the date of the recommendation for removal of restrictions, it is perfectly plain that when the whole of the purchase-money was paid to Mi Otonore the Native had not even a registerable title, and, moreover, the land was subject to restrictions.
7. The Board is of opinion that it would be establishing a very dangerous precedent to legalize documents of alienation taken, as this one was, in defiance of restrictions, and at a time when the title of the vendor was non-existent.
8. The only aspect of the matter that induces the Board to take a lenient view of Mr. Drake's action in paying over the purchase-money to Mi Otonore is that in 1901 Judge Mackay made an order awarding Mi Otonore a half-interest in the land as devisee under the will of Rawiri te Rangitekehua, who in reality had no interest to devise; but if he had had, Mr. Drake was not justified in paying over the purchase-money in defiance of the restrictions against alienation.
9. This land was not separately assessed when the transfer was signed, and it is now impossible to estimate the adequacy of the consideration expressed. The land has increased in value since.
10. Mr. Drake is not a qualified purchaser under the Native Land Act, as he holds more than the limit of area set out in Part XII of the Act.
11. Mi Otonore is still living. As she has received £40 in all from Mr. Drake on a misrepresentation that she had a saleable title to the land, and has failed to give that title, we think Mr. Drake should resort to his legal civil remedies for recovery of the money he paid Mi Otonore under that misrepresentation.
12. The Board takes the liberty of again emphasizing the grave danger of validating resurrected documents such as this one. To validate this transfer would have the effect of opening the flood-gates to scores of invalid deeds taken in defiance of statutory law, in a meagre hope that something would turn up some day to put the illegality right.

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

J. B. JACK, President.

To the Hon. the Native Minister, Wellington.

E. NICHOLSON, Member.

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