

1911.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910

(REPORT AND RECOMMENDATION UNDER SECTION 28 OF THE), ON PETITION No. 133/1910,
RELATIVE TO MANAWATU-KUKUTAUAKI 4B No. 2.

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

In the matter of a block of land called Manawatu-Kukutauaki 4B No. 2; and in the matter
of a petition by Arthur Drake, No. 133, of 1910, praying for valuation of a transfer of
part of the said block (undated).

REPORT OF THE IKAROA DISTRICT MAORI LAND BOARD.

In pursuance of your reference to the Board dated the 23rd May, the Board has made inquiry into the claims and allegations made by the petitioner, Arthur Drake, and submits the following report:—

1. The Board held a special sitting at Wellington on the 29th June, 1911, to hear evidence for and against the petition. At the hearing Mr. Drake was represented by his solicitor. None of the Native owners were present or represented, although they had been advised of the inquiry being made by the Board.

2. The title to their interests in the land in question is such that a short epitome of it is requisite for a proper understanding of the allegations in the petition.

3. The summarized history of the title is as follows:—

- (a.) On the 17th August, 1882, a Crown grant under the Land Transfer Act was issued to Rawiri te Rangitekehua and nine others for Manawatu-Kukutauaki 4B, containing 1,403 acres, antevesting to the 12th May, 1873. This grant was subject to the restrictions—"Inalienable by sale or lease for a longer period than twenty-one years, or by mortgage, except with the consent of the Governor being previously obtained to every such sale, lease, or mortgage."
- (b.) The only interest in question in the present inquiry is that of Rawiri te Rangitekehua. On the 18th December, 1878, he conveyed by deed of gift all his interest in this land to his daughter, Te Arai te Punga, and Hana Pewene. The latter's interest under this deed of gift was subsequently partitioned off, and is not now in question. The area of the interest from Rawiri now in question is 42 acres 1 rood 32 perches.
- (c.) By partition order dated the 18th July, 1889, the land was subdivided, and Manawatu-Kukutauaki 4B 2 was awarded to Te Arai te Punga (42 acres 1 rood 32 perches), and the Toka family (84 acres 3 roods 8 perches). It is the first-named interest that is now in question.
- (d.) The donee under the deed of gift, Arai te Punga, died on the 15th January, 1895, and Hingaia Raika Kereaina, an infant, was appointed to succeed her on the 30th January, 1896.
- (e.) Hingaia died on the 28th February, 1900, leaving no issue.
- (f.) Rawiri te Rangitekehua, the donor of the deed of gift, died on the 18th October, 1896, leaving a will by which he left his interest in the land in question to Mi Otonore, a stranger in blood, or distant relation. At the time of his death, however, he had no interest in the land, as he had conveyed it away under the deed of gift.
- (g.) On the 11th January, 1901, Judge Mackay ordered that letters of administration of the will of Rawiri te Rangitekehua be granted to Mi Otonore, subject to the following conditions—viz., "that so far as the deceased died possessed of an interest in the parcel of land known as Manawatu-Kukutauaki 4B Section 2, the letters of administration hereby granted shall be limited in their operation to one-half of the deceased's interest in the aforesaid land." Hakaraia te Whena was appointed successor in respect of the other half-interest in Manawatu-Kukutauaki 4B Section 2. When Judge Mackay made these orders he either was not aware that at that time Rawiri te Rangitekehua had no interest in the land, or he was under the belief that the deed of gift was not valid, and that the partition order and succession order mentioned in (c) and (d) above were, as a consequence, of no effect.

- (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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