SESSION II.
1912.
NEW ZEALAND.

NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910:

REPORT AND RECOMMENDATION ON PETITIONS Nos. 74/08, 569/08, AND 570/08, RELATIVE TO TARAIRE BLOCK.

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

SIR,— Native Land Court (Chief Judge's Office), Wellington, 7th May, 1912.

Pursuant to section 28 of the Native Land Claims Adjustment Act, 1910, I have the honour to forward herewith a report in connection with Taraire Block. As I was one of the Judges who made the report, my recommendations are those contained in the report.

I have, &c.,

The Hon. the Native Minister, Wellington. JACKSON PALMER, Chief Judge.

In the Native Land Court, New Zealand.

REPORT PURSUANT TO SECTION 28 OF THE NATIVE LAND CLAIMS ADJUSTMENT ACT, 1910, *in re* TARAIRE NOS. 1 AND 2 BLOCKS.

The Chief Judge having, pursuant to the above-mentioned section, referred to the Native Land Court for inquiry and report the claims and allegations made in Petitions Nos. 74 of 1908 (Heteraka Manihera and others), No. 569 of 1908 (Hoori Puriri), and No. 570 of 1908 (Marama Tahere), praying for further investigation of these blocks, the same were gazetted for hearing, and the hearing commenced at Kaikohe on the 19th day of April, 1912, before ourselves, Chief Judge Palmer and Judge Rawson, sitting as a Native Land Court, and was continued on the 20th and 22nd April, 1912.

Owing to minutes of evidence, not only in Taraire but in other blocks, together with maps and other documents, having to be perused and considered, we have found ourselves unable to complete our report until now.

It has been for a long time the established law of the Dominion that two things are necessary to give a proper Native title—namely (1) *take* (an original right to the land) and (2) *noho* (occupation to maintain that right). The quantum of shares allowed when the relative interests are fixed greatly depends upon the occupation. The occupation of *papatupu* lands is of various kinds, ranging from the occasional hunting or fishing in the ancestral times down to the permanent cultivation or homestead farming at the present time. All this varied occupation has been given an assessed value by the Native Land Court.

The evidence of the occupation of the original Motatau Block of about 80,000 acres, and its subsidiary blocks of about 40,000 acres, together totalling over 120,000 acres, was so very conflicting and untruthful that it was proved in many cases that a person to have occupied in accordance with the evidence would require to have lived for about three hundred years. Each set of claimants, as each block came forward, claimed exclusive occupation, and former Courts, in order to test the occupation claimed, had to go into the occupation not only of the block then before it, but also of the adjoining blocks forming this 120,000 acres. Taraire was among this group, and the allegations of occupation thereon were, as usual, so conflicting that we had to use the test of comparing it with the evidence in its adjoining group. Therefore, to set out at length all our reasons for arriving at this decision in traversing so many matters would contain so much detail that the report would be more lengthy than the occasion justified.

The investigation of the title to the Taraire Block was commenced before the Tokerau Maori Land Council (afterwards named " Board " and hereinafter referred to as " the Board ") on the 24th October, 1902, and the Board set up a Block Committee to continue the investigation and submit a report. This Block Committee's inquiries extended over a period of about six months, and it took voluminous minutes of the evidence brought forward—these minutes running into some five hundred pages. The Committee duly made its report to the Board, which was at that time presided over by Judge Browne, and the Board spent nearly two months considering objections to the report.

The Board gave its decision, the main difference between it and the report of the Block Committee being that the Board had weeded out those persons who could trace from the ancestors but could not show proper occupation.

Orders in pursuance of this decision were made on the 2nd July, 1906.

Twenty-three appeals were lodged, and the Native Appellate Court sat at Russell from the 17th January, 1908, to the 15th February, 1908, hearing such of these as had not been withdrawn or abandoned. In all, five appeals were not proceeded with, including one by Hirimai Piripo, the husband of the petitioner, Marama Tahere.

On the 23rd March, after having considered the case for more than a month, the Appellate Court gave a decision practically confirming the finding of the Block Committee and Board as to ancestors, but varying it in certain directions. Shortly afterwards petitions for a new trial were presented to Parliament. Counsel for petitioners and respondents were heard by the Native Affairs Committee, Mr. Earl representing (with Mr. Hone Heke) the former, and Mr. Blomfield the latter, who numbered some 414 out of the total 467 owners. The matter was argued before the Committee on, we understand, three mornings during the session of 1908, but nothing was done till section 28 of the Native Land Claims Adjustment Act, 1910, was passed directing the Chief Judge of the Native Land Court to refer the petitions to the Native Land Court for inquiry and report.

The petitions covering complaints against all the decisions above referred to, it was thought advisable that the Court of inquiry should consist of at least two Judges, and, as the decisions of both Judges MacCormick and Browne were to be reviewed, it was some time before two Judges not previously connected with the matter were at liberty to proceed north to hold the necessary sittings. We will now deal in detail with each of the three petitions referred to us for report :—

No. 569. Petition of Hoori Puriri.

Mr. Dunlop, who appeared for the petitioner, informed the Court that he could not expect the decision of the Appellate Court to be entirely upset, and that he would merely ask that the Court's report should be in favour of allowing the petitioner leave to appeal for more shares against Kaipo Hoterere and Wi Hongi's parties on the ground that his ancestral claims had been overlooked.

Now, not only in this case, but in others, Hoori Puriri has always been a member of Hone Ngapua's party. The decision of the Appellate Court shows that it took into consideration all lands purchased or given, to which this party had established rights (and that without inquiring closely into the question of the validity of these purchases), and that they estimated the area of these claims at 55 acres —apart from ancestral rights.

Now, the total award to them was seventy shares, equal to about 80 acres; therefore 25 acres were allowed for their ancestral claims. This 80 acres was divided amongst nine persons only, whereas the average acreage each person in the title got was between 5 and 6 acres only. It is true that the Block Committee awarded Hone Ngapua's party 150 acres, and petitioners' counsel made a great point of this. However, if the Block Committee's allotment is scrutinized it will be found that about 1,677 shares were distributed for this portion (then supposed to contain 750 acres, but afterwards found to be 867 acres): therefore the 150 shares represented at most only an area of about 70 acres, whereas they now have 80 acres.

Instead of there being anything in the Appellate Court's judgment to lead one to believe that the ancestral claims of this party have been overlooked, it is distinctly the reverse. In our opinion nothing was brought before us to show that this petitioner had been in any way injured, and we do not think that any further consideration should be extended to him.

No. 74. Heteraka Manihera's Petition.

There was the same request that the report be in favour of leave to appeal being granted.

Mr. Dunlop at first appeared in support of the petition and then retired from the case, and Wi Tute Penetana and Wiremu Manihera were heard in support of it. Wi Tute Penetana, who afterwards practically withdrew from the petition, complained that he had been grouped with Hine Tuwhaii's list under their ancestor Korora, but we cannot see that he suffered any damage thereby. He also claimed that his children should be provided for, but they are all in the title.

Of the 70 acres awarded under Korora, Wi Tute got 10, his sister 10, and two others of the family 10 between them. Wi Tute has sold his interest in No. 1 and part of his interest in No. 2.

Wiremu Manihera claimed that he got shares on account of a *tuku* only, but, as the gift land is in Taraire No. 2 and he has had shares allotted in No. 1, it is evident that his statement is incorrect.

The statement was also made that persons were included by the Court who had no occupation. Now, before the Appellate Court Heteraka certainly did raise an objection on this ground, but it was denied by Hone Wepiha, and eventually the objection was withdrawn and a settlement arrived at in terms of Heteraka's own proposal. Heteraka was the leader of, and acting for, these petitioners at the time. Most of the statements in this petition are incorrect—some of the petitioners have not even attempted to prove. Wiremu Manihera has sold portion of his interests, and his claim by occupation is absolutely denied except a comparatively modern one dating from, and in consequence

of, his marriage. Owing to the area of No. 1 proving greater than originally supposed, these people got more than the Appellate Court intended to give them.

To sum up shortly, we may say that we can find no merits in this petition.

No. 570. Marama Tahere's Petition.

The Appellate Court found in favour of a gift to Wharetomokia set up by Marama Tahere and party and Noa Pakaraka and party, but found further that the donees had not maintained their occupation up to the limits of the gift as stated by Marama.

The petitioner further asserted that Wharetomokia in his turn gave the land to Te Koikoi, and claimed the whole for her party under that ancestor. The Appellate Court found this second gift not proved, as it rested upon mere assertion, not only uncorroborated, but in some respects even contradicted by the evidence of Eru Tahere, the father of Marama. The gist of this petition is a request that this second gift be upheld.

It is a well-known rule in the Native Land Court that a claim by gift, being easily put forward and hard to disprove, must be properly supported to be successful—in fact, must be proved up to the hilt—and the Native Appellate Court applied this rule.

The descendants of Eru Tahere live at Te Iringa and Whakataha. It is true Eru had a fence on this land now claimed by them, but it includes the fences of others who have established rights. Eru was well known as a man of strong character and domineering tendencies, and it is no unfair assumption under the circumstances to believe that he intimidated the owners there and that they feared to resist his erection of the fence. Moreover, it was only erected in 1897, and Eru at this time was living at Punakitere, where he has a big award. Marama herself admits that they had no kaingas on this land they ask for.

There is, in our opinion, sufficient evidence to justify the view taken and the award made by the Appellate Court, for it is clear that the Kaikohe Hill was occupied by others than Tahere, and, moreover, this petition conflicts with the claims of Hoori Puriri as set out in his petition.

Generally.

In view of the facts that the Block Committee took six months investigating this title, that Judge Browne and the Board spent about two months reviewing the Block Committee's work, that the hearing of the appeals by ex Chief Judge Seth-Smith and Judge MacCormick lasted a month, that the petitioners were originally so few out of the total number of owners, that their numbers are reduced now to about a dozen, and that some of the former petitioners and the near relatives of the present ones have now turned round and are fighting these petitions, it seems to us that a great wrong would be done were the titles to these blocks reopened.

Partitions have been made and costs for surveys and legal expenses incurred. Some of the owners, including some of the petitioners, have sold their interests, and any attempt to dispossess purchasers would result in trouble, especially as some of the interests were acquired before the passing of the Act.

Above and beyond all this, however, our chief reason for refusing to support the petitioners in their requests for a rehearing is the fact that they have not shown us that they have been injured in any way by the decision of the Appellate Court—we believe that they have received all they are entitled to.

No further evidence was tendered to us than that already in the minutes, and it was not suggested that any fresh testimony was available. Any interference with the present partitions would lead to confusion and the unsettling of those who are now in possession under the orders of the Court, and we understand that these persons have presented a counter-petition praying that the case be not reopened.

Dated at Wellington, this 7th day of May, 1912.

JACKSON PALMER, Chief Judge.
W. E. RAWSON, Judge.

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