1917.

NEW ZEALAND.

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT ACT, 1916.

REPORT AND RECOMMENDATION ON PETITION No. 167 OF 1915, RELATIVE TO MAUNGATAPU D BLOCK.

Laid before Parliament in compliance with Section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916.

Native Land Court (Chief Judge's Office), Wellington, 26th May, 1917.

The Hon. the Native Minister, Wellington.

PURSUANT to the provisions of section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916, I have the honour to forward herewith the report of Charles Edward MacCormick, Esq., a Judge of the Native Land Court, on the petition (No. 167 of 1915) of Kahukiwi Parata, praying for further inquiry *re* the ownership of area remaining in the Maungatapu D Block.

The report is very full in all particulars concerning the Au-o-Waikato Block (of which Maungatapu D is a small remnant) from the date the original title was investigated by the Native Land Court just fifty years ago.

After considering all the proceedings in the meantime as set out in the report, I beg to suggest that compensation for 7 acres, which the report fixes as a maximum, be offered in full settlement of the Parata claims, to be paid by the Waikato-Maniapoto District Maori Land Board out of the portion of the rents accruing to Riaki Tahatiki and Reo Hoani under the registered lease of 100 acres to W. R. Cossar, on an up-to-date valuation to be made for the purpose.

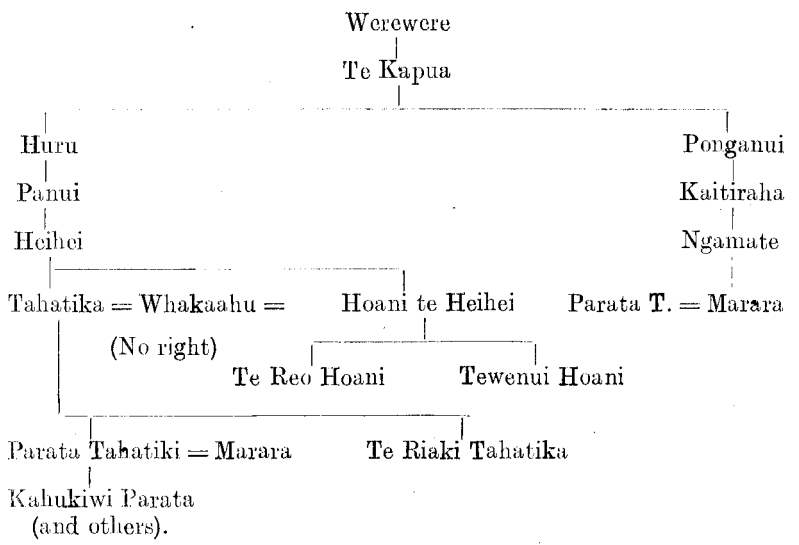
JACKSON PALMER,
Chief Judge.

SIR,— Native Land Court, Auckland, 13th March, 1917.

Maungatapu D.

I have the honour to report that in terms of your reference to the Native Land Court under section 24 of the Native Land Amendment and Native Land Claims Adjustment Act, 1916, for inquiry and report as to the claims and allegations in petition No. 167 of 1915, by Kahukiwi Parata, praying for further inquiry *re* ownership of area remaining in Maungatapu D Block, I duly held such inquiry at Morrinsville on the 6th February last and following days.

The petitioner and party were represented by Mr. Buchanan, solicitor, and Captain Gilbert Mair; the present owners, Te Riaki Tahatika and Te Reo Hoani, by Mr. McDavitt, solicitor, and Teni Tuhakaraina. The petitioner, Kahukiwi Parata, and some others of her family were personally present. They asserted rights under both parents, and propounded the following *whakapapa*:—



The *whakapapa* from Huru to Parata Tahatika is admitted, but that of Marara is strongly denied. It was given before me by Tua Hotene, who admitted that he did not give it on any previous occasion in the Au-o-Waikato–Maungatapu proceedings because, he says, there was no dispute about it. But he gave very full *whakapapa* in his evidence in 1898, tracing out the Parata family and others from Huru, but does not mention the line of Marara, or give Ponganui as a child of Te Kapua. It will be noticed that this *whakapapa* differs materially from that given for Marara in the petition to Parliament. I cannot find any reference to the persons in this line in the evidence of the several hearings, and Tua Hotene deposed before me that Kaitiraha, a woman, married into N'Kopirimau, a hapu of Te Aroha district. I conclude from all the circumstances that even if the *whakapapa* be correct no right could be claimed under it, and that Marara lived on the land only because she married Parata Tahatika.

It is fully admitted that Parata lived on Maungatapu D Block at Kaiatemata in common with the other descendants of Heihei, whose kainga it is said to have been originally. The evidence of the different hearings goes to show that Hoani te Heihei was the most prominent of the family, and he was one of the original grantees; but Parata also lived there. It is clear, therefore, that his right must have been the same as that of his full brother, Te Riaki Tahatika, and his half-brother, Te Hauiti Tahatika, and that between them they should have the same interest as the family of Hoani te Heihei. Ancestral descent and occupation being thus established, I put it to the owners' conductors whether they justified the exclusion of Parata's family by the Royal Commission in 1902 after they had been included by the Native Land Court and Native Appellate Court without any apparent objection, or whether the exclusion was by mistake or fraudulent design. The answer was that they contended the exclusion was justified, and was done designedly for good and sufficient reason. They further contended that the Parata family were represented before the Commission, and acquiesced in what was done. As to this I could obtain little definite information. Tua Hotene, who gave evidence before me for Paratas, and who seems to have always acted as leader of their party throughout all the proceedings in connection with Maungatapu and Au-o-Waikato, stated that he did not know whether any of the Parata family appeared before the Royal Commission or not, or whether any of them were in attendance at the proceedings. Teni Tuhakaraina, on the other hand, swore positively that he met and conversed with Punia Parata there, and invited her to join his section of the owners, but she replied she would adhere to Tua Hotene as at previous hearings.

It is on record that Mr. J. M. Fraser represented Hoani te Heihei before the Commission, and Tua Hotene says that Mr. Fraser also represented Te Riaki Tahatika. Teni Tuhakaraina was one of the leaders of this party. It certainly seems that the Parata family would be regarded as associated with Tua Hotene. Yet it is Mr. J. M. Fraser who strikes out the name of Parata from his list (page 68 of Minutes of Chairman of Royal Commission).

Pepene Eketone, who represented Tua Hotene and party, agreed to strike out Rihiata Parata's name (same page 68) apparently on the ground that she was not born in 1867, when title was first investigated. That might have been all right provided Parata's own name was included. He did not die till 1893. Tua Hotene states that he did not know of or agree to the exclusion of the Paratas. It will plainly appear later in my report why Mr. Fraser's section would instruct him to drop Parata's name, but it seems from Teni Tuhakaraina's own evidence that Fraser did not really represent them, and that Pepene did, in the general way common enough in the Courts, of acting for a whole party, but directly instructed only by certain leaders. I am of opinion, however, that though they may have been thus far represented, and some of them may even have been present at times during the proceedings, they could not have understood or acquiesced in their exclusion. It seems to me that they left everything to Tua Hotene and the professional conductor, and were omitted through misunderstanding or by design. The possibility of inadvertent exclusion seems to be excluded by the notes on page 68 referred to.

The minutes do not disclose any reason for leaving out Parata's name. But it was contended before me by Mr. McDavitt and Teni Tuhakaraina that Parata was left out because he had become one of the owners of Kiwitahi No. 1 Block, of 3,119 acres, subsequently sold; that Kiwitahi was originally part of the same land as Maungatapu, held under the same *take;* that Parata had thereby exhausted his rights, and was properly left out by the Commission. Te Riaki Tahatika, Te Reo Hoani, and others of the Heihei family were not included in Kiwitahi No. 1. The question of whether the boundary of the gift to the children of Werewere, which was the *take* of Maungatapu, included Kiwitahi No. 1 has been in dispute throughout between Teni Tuhakaraina's party and that of Tua Hotene. It appears to me that Kiwitahi No. 1 was awarded by the Court under the ancestor Tukokopu, and not under this gift. The parties are closely connected. Hopukanga, a descendant of Tukokopu, married Pare, a daughter of Werewere. Kiwitahi No. 1 went through without a contest, but no claim was made under gift to Werewere's children. It was claimed for and awarded to Ngatipehi Hapu of N'Haua, and not to N'Werewere. In any event Te Riaki, Hoani te Heihei, and others of the family could all claim as N'Pehi. It has to be remembered that Kiwitahi was investigated in 1868; the title is not under the 17th section of 1867. There are only six owners; they were obviously representatives. Parata, presumably, represented the whole family. Whether they participated in the proceeds of the alienation or not there is no evidence to show. Neither Te Riaki nor Te Reo Hoani was called on this point. If it was ever agreed or generally understood that Parata's rights were exhausted by the award in Kiwitahi No. 1, how comes it that his family were included, without any protest or objection, by the Native Land Court in 1898, after the names had been settled by a Maori committee of elders interested, and that the Appellate Court not only retained their names but increased the award to them? It was asserted by Teni Tuhakaraina that others besides Parata were excluded from Maungatapu because they were owners in Kiwitahi No. 1, and he

specially mentioned Rihia or Irihia te Kanae; but I find that Rihia and several of his children *are* included by the Commission. It would also appear from Teni's evidence that he was willing to take Punia Parata into his party before the Commission. I do not consider, therefore, that on all the facts and circumstances the Parata family were justly and properly excluded from all interest in the block.

But it is not too easy to equitably remedy their loss or hardship. They were admittedly aware of their exclusion as far back as 1905, some three years after the Commission sat, yet took no action for seven or eight years, during which time the bulk of the land has been alienated.

I have already pointed out that the interest of the family of Tahatika—that is, Parata, Te Riaki, and Te Hauiti—should have been the same as that of the family of Hoani te Heihei. I find that on the definition of relative interests in Au-o-Waikato – Maungatapu by the Native Land Court in 1905 Hoani te Heihei's family got four shares—viz., Hoani himself two shares, and his daughter Te Reo Hoani two shares. His son Tewenui Hoani was not included. Te Riaki Tahatika got two shares. It does not appear that any of his children were included. Te Hauiti Tahatika also got two shares, but these, apparently, were allotted to him under the right of his mother, Rangiwaerea, the second wife of Tahatika, and not under Tahatika. Thus Hoani te Heihei's family got four shares and Tahatika's family only two shares. Had Parata's name been included, he or his family would therefore have fairly been entitled to two shares among them—that is, two shares in the whole block of Au-o-Waikato – Maungatapu. These two shares would represent approximately 193 acres. Obviously the present owners of Maungatapu D cannot be called on to provide this. If the Parata family had been included in the title by the Commission, and had been allotted two shares or any shares on the definition of relative interests, manifestly all the owners in the whole block would have provided for these shares: that is to say, instead of the total shares being 136, they would have been 138.

The total area was considered to be 13,900 acres. Roads and other deductions reduced this to some extent. Now, Maungatapu D, to which this inquiry is limited, contains 488 acres 3 roods 27 perches. The owners are Te Riaki Tahatika, two shares, and Te Reo Hoani, three shares. The latter, as I have said, received two shares originally, and also obtained one share by succession to her father Hoani te Heihei. The latter's other one share went to his son Tewenui, who is not in the title of Maungatapu D. Thus on the assumption that the Paratas were included in the title with two shares, Te Riaki Tahatika and Te Reo Hoani would have contributed $\frac{5}{138}$ of the area represented by those shares—that is to say, $\frac{5}{138}$ of 193 acres, or approximately 7 acres. I do not see how they can justly be asked now to find more than this. The Paratas' own negligence and delay have brought about their present unfortunate position. It cannot be right to punish Te Riaki Tahatika and Te Reo Hoani for this by depriving them of land which the other owners of the whole block would have had to provide if the Parata claims had been presented and prosecuted at the proper time.

The position of the title is as follows: Maungatapu D was partitioned on the 28th January, 1914, into D No. 1 (100 acres) and D No. 2 (388 acres 3 roods 27 perches). Orders have been completed by survey and signed, but have not been registered under Land Transfer Act. D No. 1 is held by Te Reo Hoani in severalty, D No. 2 by Te Reo Hoani (192 shares) and Te Riaki Tahatika (196 shares). But prior to this partition a lease had been granted by both owners of D to W. M. Cossar of 400 acres for forty-two years from the 15th September, 1911. This lease was duly confirmed, and has been registered on Land Transfer title P.R. 44/1 against Maungatapu D. The 88 acres 3 roods 27 perches excluded is the south-east corner of the present D No. 2. A transfer of this 88 acres 3 roods 27 perches, dated the 12th October, 1915, in favour of K. J. B. McCardle, was presented for confirmation, but the Waikato-Maniapoto District Maori Land Board refused confirmation so far as Te Reo Hoani's interest was concerned, and adjourned consideration of the matter so far as Te Riaki Tahatika's interest was concerned till further proof was forthcoming of his having received the purchase-money. No further action seems to have been taken. Proclamation No. 3277 is registered against the Land Transfer title of Maungatapu D. This purports to take and vest in Morrinsville Town Board, for purposes of a recreation reserve, 22 acres 3 roods 24 perches of Maungatapu D (*inter alia*). This is part of the leased area. Proceedings have been instituted in Supreme Court to set aside the Proclamation as invalid. These proceedings are still pending, but I am informed by solicitor acting for the Natives that it is hoped to dispose of matter at ensuing sitting at Hamilton this month.

I have, &c.,

The Chief Judge, Native Land Court, Wellington. CHAS. E. MACCORMICK, Judge.

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