

One thing is certain: a very large number of Chatham-Islanders did receive extensive grants in the Urenui district, but the Court is satisfied that such grantees were the Chatham-Islanders who arrived in December, 1867, or afterwards, and that few if any of the real Ngatimutunga absentees (of July, 1867) were included in any of the Chatham-Islanders' awards. If, however, it can be shown by the Crown that any Ngatimutunga absentees (of July, 1867) did in fact participate in the award of 10,000 acres for the Chatham-Islanders, then such absentees should be excluded from the 3,000-acre award for the Ngatimutunga absentees. No evidence whatever has been produced to the Court to show that any Ngatimutunga absentees did participate in any of the grants. The grant of 500 acres to Mrs. Jane Brown and her sister in the Urenui district will be referred to later: it is sufficient to say here that this grant had nothing whatever to do with the awards to the Chatham-Islanders or to the Ngatimutunga absentees.

Before passing from the report of the Fox-Bell Commission the Court will refer to a supplementary report presented by (Sir) William Fox to the Hon. Native Minister, 26th April, 1884 (see parliamentary paper, 1884, A.-5A, p. 7, Appendix 4). In this report Sir William Fox points out that it has been found impossible to ascertain the names of the Natives in whose favour Mr. Richmond's promises were made. He considered, however, that many of the absentees in whose favour the promises were made returned to the Taranaki district and were included in tribal reserves. The Court has been quite unable to obtain any evidence of such return and inclusion—no evidence of a satisfying nature was presented either before the Mackay Commission in 1905 or before the Court in 1923—and the Court recommends that, in the absence of evidence of any such awards, the Ngatimutunga absentees be held to be still entitled to the fulfilment of the promises made to them by the Government in July, 1867.

3. The Court will now deal with the report of the Mackay Commission of 1905 (see parliamentary paper G.-2 of 1905).

The First Report of this Commission, dated 7th June, 1905, recommended that an area of 992 acres (equal to sixty-two full shares of 16 acres each) be awarded to the persons named in the schedule to the report. The Commission recommended that the award be restricted to the male and female adult members of the Ngatimutunga Hapu living at the time Mr. Richmond's promises were made in July, 1867. The children then living were not to be included in the award except as successors to adults who were living in July, 1867. This Commission also reported that some Ngatimutunga absentees in the Chatham Islands should be included: a supplementary report (see *infra*) gives a list of Chatham-Islanders recommended for inclusion.

The Commission, after inspecting the land, assessed the unimproved value of the Ngatimutunga 3,000-acre reserve at the time it was disposed of by the Crown (1890 or thereabouts) at 12s. an acre.

The report also refers to the fact that, out of the awards recommended by the Fox-Bell Commission in 1880—i.e., Ngatitama, 1,300 acres; Ngatimutunga, 3,000 acres; Ngatiawa, 2,700 acres; Puketapu, 2,100 acres; Taranaki, 3,100 acres: total, 12,200 acres—the Ngatimutunga award was the only one still not carried out.

In the Second Report of the Mackay Commission, presented 29th June, 1905, the Commission recommends the inclusion of a number of Chatham-Islanders for eleven full shares of 16 acres each, or a total of 176 acres, the names being set out in the schedule to the report.

A perusal of the proceedings leading up to these two reports of the Mackay Commission has convinced the Court that Commissioner Mackay all along acted upon the assumption that any award was to be definitely restricted to 16 acres for each adult absentee. The Court is inclined to think that Mr. Kensington, the Under-Secretary for Lands, was allowed to take an unduly prominent part in the proceedings, and that it is a pity the Natives were not allowed to be represented by at least one solicitor capable of putting the Native side of the question intelligently before the Commission.

The Court is of the opinion that the Commission made a fundamental mistake in assuming that the award was restricted to 16 acres for each adult absentee. The Court is quite clear on the point that the Government in July, 1867, definitely promised an award of a fixed area of 3,000 acres to the absentee members of the Ngatimutunga Hapu. The Government of the day knew how many absentees there were, and in the opinion of the Court the list included all the absentees whether minors or adults. The 10,000-acre award for the Chatham-Islanders was at the rate of 50 acres for each man, woman, or child of the 200 islanders who returned.

The Court is definitely of the opinion that the Government in 1867 merely used the 16-acre basis as a rough-and-ready method of arriving at a fixed area to be awarded to the whole group of Ngatimutunga absentees, and that, by agreeing to leave the division of the 3,000 acres to the absentees themselves, it recognized that on such a division the people could arrange to award more shares to adults or to prominent absentees than to minors.

The Mackay Commission seems also to have taken it for granted that Mr. Kensington was correct in alleging that Mrs. Jane Brown (Heni te Rau) and her sister received a 500-acre award in the Urenui district in full satisfaction of all claims, including claims as Ngatimutunga absentees. The Court has investigated this matter, and finds that the 500-acre award was made as compensation for a valuable piece of land called Mataihuka, near Waikanae, wrongly included in a sale to the Crown. The Court has perused a letter dated 13th June, 1873, from W. N. Searanck, the Crown Purchase Officer, to one H. T. Kemp, admitting that this Mataihuka land was included in the Crown purchase by mistake, and that it was an area of 300 acres, and was "the cream of the block." It belonged to Mrs. Jane Brown's mother, Peti Nichol. Mrs. Jane Brown was left out of the award recommended by the Mackay Commission. The Court considers this to have been a serious mistake, which has given point to all the subsequent proceedings.

The reports of the Mackay Commission have not been given effect to. The Court recommends that they be not given effect to, except as a guide to the names of a large number of the persons who will be found ultimately to be entitled.