

named, through the conquest; that the Moutere and Motueka district, comprising 57,000 acres, belonged to the Ngatirarua and the Ngatiawa; and that the Massacre Bay district, comprising 45,000 acres, belonged to the Ngatirarua, Ngatitama, and Ngatiawa: and that, although the reserves made by the Company were situated in certain localities, the fund accruing thereon was a general one in which all the hapus who owned the territory comprised within the Nelson Settlement had an interest proportionate to the extent of land to which they were entitled at the time of the sale to the Company.”⁽¹⁾

In February, 1901, Judge Mackay, on application by the Public Trustee, investigated those sections in Motueka which had been originally set apart by Commissioner Spain for the use and occupation of the resident Natives, together with certain other sections which had been set apart for similar purposes by Mr. James Mackay in 1862.⁽²⁾

As a result of the Court's investigations an area of 935 acres which had originally formed part of the Nelson “tenths” was declared to be beneficially owned by separate groups of Natives. At the time of inquiry it was found that 713 acres approximately were under lease to Europeans, and the balance of 222 acres occupied by the resident Natives. The latter area was accordingly declared to be reserved for the use and occupation of these resident owners, who were allowed to remain upon the land rent-free on condition that they cultivated such lands for themselves and did not lease to outsiders. The special conditions pertaining to these reserves were summarized by Judge Mackay, who stated that—

“In order to make the position intelligible it is necessary to explain that the sections comprised in the several Motueka accounts form parts of certain sections pertaining to the New Zealand Company's ‘tenths’ which were specially allotted to certain Natives for their use and occupation, and with their concurrence such portion as they did not actually need and were desirous to let to European tenants were leased by the Commissioner, and the rents accruing thereon were paid separately to the individual Native whose land was comprised in the lease to A, B, C, or D, as the case might be. As these leases were not all granted at the same time or for the same periods, on the lease to A terminating and the Native to whom the land belonged resuming possession he ceased to participate in the rent accruing on the section, and his particular portion was again leased. It is possible, therefore, under the system followed in your Department of paying all the rents accruing in the several sections into separate accounts, and in distributing in proportionate shares the money so credited amongst all the persons included in the original list of recipients, irrespective of whether the leases under which they specially derived still existed, that the Natives who were actually entitled have had their income diminished in consequence.

“The ‘tenths’ in the Motueka district occupied by the Natives are in a peculiar position, as these lands are practically the property of the Natives to whom they were allotted, although vested in the Public Trustee under the Act of 1882 and amending Acts, having been allotted to them by Mr. Commissioner Spain in 1844 in conformity with an arrangement made by Captain Wakefield, the New Zealand Company's Agent, that they should retain a considerable portion of the part then known as the ‘Big Woods’ at Motueka, then in cultivation by them.

“Mr. Spain was clothed with plenary powers, consequently any act performed by him was the act of the Crown itself, and, although subsequent colonial legislation has placed these lands under statutory control, the Natives specially entitled to these lands under the original arrangements remain the virtual owners.”⁽³⁾

2. THE SECOND NATIVE TRUST ACT.

The Public Trustee continued to manage the Native reserves committed to his charge by virtue of the 1882 Act until 1921, and during his administration nothing of great importance occurred. A few years after his appointment as Commissioner Mr. A. Mackay was elevated to the position of Native Land Court Judge, and from then onwards the work in connection with the reserves came within the scope of the Public Trust Office administration.

In 1920 the Government of the day decided that it would be in the interests of the Maori race to appoint a separate and special trustee of Native moneys and Native lands, and a Bill to provide for the appointment of a Native Trustee and to make better provision for the administration of Native reserves was introduced. The first Native Trust Act was Governor FitzRoy's Ordinance of 1844, which, although it received the Royal assent, was not brought into operation owing to the fear that sectarian controversies would result in carrying out its provisions. The Native Trustee Act of 1920 was a very different measure, and met with almost unanimous approval. In introducing the Bill, Sir William Herries, Native Minister, said that the basis of the measure arose from the report of a Commission appointed in 1912 to inquire into the affairs of the Public Trust Office, which recommended that the whole of the Native reserves and their administration should be vested in an independent body. It was proposed, therefore, to separate the Native part of the Public Trust business from the pakeha part, and to set up another body—the Native Trustee—to whom would be transferred all the reserves already held in trust by the Public Trustee. The Bill also made provision for lending to Natives who held land in severalty. He pointed out that other Government lending Departments

(1) Nelson Minute-book 3/1.

(2) The sections set apart in conformity with the Spain award, after adjusting subsequent exchanges, were 157, 160, 161, 162, 163, 164, 165, 181, 182, 183, 184, 187, 188, 210, 211, and 212. The sections set apart by Mr. James Mackay in 1862 were 126, 127, 129, 132, 144, 145, 146, and 147. Parts of these sections were included in the grant to the Bishop of New Zealand.

(3) Extract from memorandum from Judge Mackay to the Public Trustee, 22/9/99. (Native Trust records 6/23A/1.)